

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





1-6-75

ORIGINAL

**74-2360**

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**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

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AERONAVES DE MEXICO, S.A.,

*Plaintiff-Appellant,*

—against—

TRIANGLE AVIATION SERVICES, INC.,

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK (BRIANT, J.)

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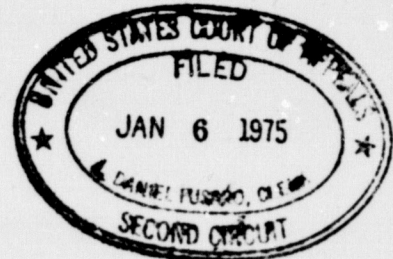
**APPENDIX**

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BRIEANT, J.

74 CIV. 26

DATE	PROCEEDINGS	Date Ord Judgment
Jun. 24-74	Filed complaint & issued summons.	
Jun. 24-74	Filed pliffs affdvt & notice of motion to stay arbitration. Ret.	
Jun. 24-74	7-10-74 Filed Order permitting James C. Smith, F. Manfredonia & C. Sucoff to make service of summons & complaint.....Clerk.	
Jul. 2-74	Filed Stip & Order adjourning pliffs motion for a stay to 7-19-74., & extending time for deft to answer or move to 7-24-74..BRIEANT, J	
Jun. 26-74	Filed summons & affdvt of personal service of summons, complt. & notice of motion.	
Jul. 19-74	Filed defts notice of motion to dismiss the complaint. Ret. 7-30-74.	
Jul. 19-74	Filed defts memo in support of motion to dismiss the complaint.	
Jul. 26-74	Filed defts rebuttal memorandum in opposition to pliffs motion to stay arbitration.	
Jul. 26-74	Filed pliffs memo in opposition to defts motion to dismiss the complt.	
Sep. 16-74	Filed Decision 1117...Pltff's motion for a stay of arbitration is denied, Deft's Motion is granted to the extent of directing entry of a final judgment which will declare the right of the deft to compel and direct arbitration of the entire controversy, and deny relief to pltff...The proceedings before the arbitrators are stayed pending expiration of the time within which an appeal may be taken, and if taken, pending the decision hereon, No bond is necessary, Settle a final judgment on 5 days notice.....Brieant, J. n/m	
Sep. 19-74	Filed defts affdvt in opposition to motion to stay arbitration.	
Sep. 19-74	Filed defts memo in opposition to motion for stay of arbitration.	
Sep. 19-74	Filed supplemental affdvt in support of motion to stay arbitration (by pltff.)	
Sep. 19-74	Filed pliffs reply to defts memo in opposition to motion for stay of arbitration.	
Sep. 27-74	Filed Final Judgment & Order that motion of deft (Triangle) to dismiss the complt is granted, except to the extent that the Court has undertaken to declare the rights of the parties in this judgment. Motion of pltff to stay arbitration is denied. Dft & pltff are directed to proceed in arbitration, as indicated. Proceedings before arbitrators AAA Index are stayed pending expiration of time within which an appeal may be taken. Arbitrators shall enjoy plenary jurisdiction to decide issues of fact & law including the interpretation of the contract.....BRIEANT, J.	
Oct 10-74	Judgment Entered, Clerk 9-30-74. m/n Filed Pltff's Notice of Appeal from a final judgment entered 9-30-74... Appeal to the USCA....Notice mailed to Miller & Seeger, 660 Madison Ave., NYC. on 10-15-74..	



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
AERONAVES DE MEXICO, S.A., :  
Plaintiff, :  
-against- : COMPLAINT  
TRIANGLE AVIATION SERVICES, INC., :  
Defendant. :  
----- x

Plaintiff, by its attorneys, Skadden, Arps, Slate,  
Meagher & Flom, for its complaint alleges upon information and  
belief as follows:

1. Jurisdiction of this Court is founded upon diversity  
of citizenship, 28 U.S.C. Section 1332, in that this controversy  
is between citizens of a state and citizens of a foreign state  
and the amount in controversy exceeds \$10,000, exclusive of  
interest and costs.

2. Plaintiff Aeronaves de Mexico, S.A. ("Aeromexico")  
is a corporation organized and existing under the laws of Mexico,  
with its principal place of business in Mexico City, Mexico.  
Aeromexico is an international air carrier owned by Nacional  
Financiera, S.A., an official agency of the Government of Mexico.

3. Defendant Triangle Aviation Services, Inc.  
("Triangle") is a corporation organized and existing under the  
laws of the State of Delaware, with its principal place of  
business at 145-119 New York Boulevard, Jamaica, New York.

4. This complaint is for a declaratory judgment pursuant to the provisions of Title 28 U.S.C. §2201.

5. At all times relevant to this action, to and including May 31, 1974, ground services for Aeromexico's DC-8/50 and DC-8/63 aircraft were provided pursuant to a contract dated November 16, 1973 (the "Contract") (Exhibit A hereto).

6. The Contract provided for the furnishing of ground services for DC-8/50 and DC-8/63 passenger aircraft only. The Contract further provided that, in the event Aeromexico were to operate a different aircraft type, "an increase in the charges will be negotiated to the satisfaction of both parties upon ten (10) days' notice to" Aeromexico (Exhibit A, p. 5 and Exh. D annexed to the Contract).

7. Some time prior to May 2, 1974, Aeromexico notified Triangle that it intended to operate DC-10-30 aircraft into and out of JFK and requested Triangle to furnish a quotation of its charges if it were to perform such services.

8. On or about May 2, 1974 Triangle submitted a quotation (Exhibit B hereto).

9. Aeromexico considered these charges unacceptable and so notified Triangle on May 14, 1974 (Exhibit C hereto), stating:

"If you are prepared to quote substantially lower charges, we will be prepared to discuss them with you.

However, if you are not prepared to do so, would you notify us at your earliest convenience so that AEROMEXICO can make other arrangements to handle the aircraft at JFK."



10. Triangle knew that Aeromexico intended to put the DC-10-30 equipment into service on a daily basis commencing May 31, 1974 but nevertheless Triangle failed to respond to Aeromexico's request. By letter dated May 21, 1974 (Exhibit D hereto) Aeromexico notified Triangle that unless Triangle submitted a lower quotation by 5:00 p.m., May 22, 1974, Aeromexico would make other arrangements for the provision of services for its DC-10-30 aircraft.

11. Triangle failed to accede to Aeromexico's request and, by letter dated May 22, 1974 (Exhibit E hereto), Triangle stated, among other things, that "it appears that we may have reached an impasse". Thereafter Aeromexico made other arrangements for ground services for its DC-10-30 aircraft.

12. On June 5, 1974, Aeromexico was served with a Demand for Arbitration by Triangle (Exhibit F hereto).

13. The Contract does not provide for arbitration of charges for servicing DC-10-30 aircraft but rather provides that such charges must be "negotiated to the satisfaction of both parties" (Exh. A, p. 5).

14. Aeromexico made no agreement with Triangle to service any aircraft other than DC-8/50 and DC-8/63 Passenger Aircraft.

15. The Contract does not empower an arbitrator to establish or create a new contract and impose it on the parties.

16. Aeromexico no longer operates DC-8/50 or DC-8/63 equipment into or out of JFK Airport. The parties have been



unable to agree on a mutually satisfactory charge for providing service to DC-10-30 aircraft and, accordingly, there is no arbitrable issue and no basis for arbitration.

17. An actual controversy thus has arisen and now exists between Aeromexico and Triangle, and Aeromexico is in need of declaratory relief and of such other relief as is hereinafter set forth.

WHEREFORE, Plaintiff respectfully prays that this Court enter a judgment: (1) that no contract exists between Aeromexico and Triangle with reference to the provision of ground services for Aeromexico's DC-10-30 aircraft; (2) that Aeromexico is not obligated to deal with Triangle with reference to servicing its DC-10-30 aircraft; (3) that no arbitrable issue exists under the Contract; (4) enjoining Triangle from arbitrating matters relating to the charge for servicing DC-10 aircraft; and (5) granting to plaintiff such other and further relief as to this Court seems just and proper, including costs and disbursements.

Dated: New York, New York  
June 21, 1974

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

By *Leslie H. Arps*  
(A Member of the Firm)  
Attorneys for Plaintiff  
919 Third Avenue  
New York, N.Y. 10022  
Tel. No.: (212) 371-6000

1 AGREEMENT, made as of this sixteenth day of November, 1973  
2 by and between TRIANGLE AVIATION SERVICES, INC. having  
3 its principal place of business at 145-119 New York Boulevard,  
4 Jamaica, New York 11434 (hereinafter called TRIANGLE)  
5 and AERONAVES de MEXICO having an office at  
6 500 Fifth Avenue, New York, New York (hereinafter called  
7 AIRLINE). 10036

8 WITNESSETH:

9 WHEREAS, TRIANGLE is engaged in the business of  
10 furnishing cargo and line services to air carriers engaged in  
11 air transportation at the John F. Kennedy International Airport  
12 (hereinafter called the Airport) pursuant to a permit issued  
13 by the Port Authority of New York and New Jersey (hereinafter  
14 called the Authority), and

15 WHEREAS, AIRLINE desires to engage TRIANGLE to furnish  
16 such services to AIRLINE.

17 NOW, THEREFORE, in consideration of the promises and  
18 covenants to each other made, and other good and valuable  
19 consideration, TRIANGLE and AIRLINE agree as follows:

20 ARTICLE I

21 Performance of Services

22 TRIANGLE shall furnish, at the Airport, to aircraft of  
23 AIRLINE and of subsidiary, associated or affiliated companies  
24 of AIRLINE (as defined in the lease or contract between  
25 AIRLINE and the Authority, the services enumerated in  
26 Exhibit A attached hereto, and AIRLINE hereby employs TRIANGLE  
27 to furnish such services to it and to said subsidiary,  
28 associated or affiliated companies.

29 EXHIBIT A



ARTICLE II

Cooperation by AIRLINE

2-1 In order to permit performance of the afore-said services in a timely and efficient manner, AIRLINE shall cooperate with TRIANGLE in accordance with reasonable requests made by TRIANGLE. Without limiting the generality of the foregoing, AIRLINE shall, as to itself and its subsidiary, associated and affiliated companies, comply with the following provisions of this Article II.

2-2 AIRLINE shall submit to TRIANGLE not later than the 15th day of each month its flight movement advisory or plan showing the scheduled movements for the subsequent month. AIRLINE shall notify TRIANGLE immediately of any changes in such flight movement advisory or plan and of any additional aircraft movements.

2-3 AIRLINE shall submit to TRIANGLE on or before February 1st of each year the flight patterns and operational characteristics for each of the subsequent months of April through October or for such other span of months as AIRLINE considers to comprise its summer flight schedule. The current information is attached hereto as Exhibit B.

2-4 AIRLINE shall submit to TRIANGLE on or before August 1st of each year the flight patterns and operational characteristics for such of the subsequent months of November through March or for such other span of months as AIRLINE considers to comprise its winter flight schedule. The current information is attached hereto as Exhibit C.

1 2-5 AIRLINE shall notify TRIANGLE as soon as  
2 possible of the estimated time of arrival of each aircraft and  
3 of the gate assigned to such arriving aircraft and of any  
4 revisions thereto.

5 2-6 AIRLINE shall notify TRIANGLE reasonably in  
6 advance of the actual time of arrival of each inbound aircraft  
7 as to whether mail is to be unloaded and delivered to the  
8 Airport U.S. Mail Depot and of special handling requirements,  
9 if any, for baggage and cargo to be unloaded from such  
10 arriving aircraft.

11 2-7 AIRLINE shall notify TRIANGLE reasonably in  
12 advance of any change in the estimated time of departure of  
13 each outbound aircraft and of the gate assigned to each such  
14 aircraft and when baggage, cargo or mail to be loaded on said  
15 aircraft requires special handling.

16 2-8 AIRLINE shall provide all necessary tie down  
17 equipment for cargo loaded by TRIANGLE.

18 2-9 AIRLINE shall unload TRIANGLE's cargo  
19 transportation containers within one (1) hour of delivery  
20 to AIRLINE cargo warehouse in order to make said containers  
21 available for other operations.

22 2-10 AIRLINE shall give written notice to TRIANGLE  
23 of any subsidiary, affiliated or associated companies to which  
24 AIRLINE wants TRIANGLE to render services hereunder, and  
25 TRIANGLE shall be entitled to rely on such notice until it is  
revoked in writing by AIRLINE.



ARTICLE 111

Charges

3-1 AIRLINE shall pay to TRIANGLE the basic charges as set forth in Exhibit D, attached hereto. Each arrival or each departure shall be considered a separate plane movement. An aircraft arrival and departure shall be considered an aircraft turnaround or transit. Said basic charges shall be adjusted as provided hereinafter.

3-2 As of the last day of each calendar month during the term hereof TRIANGLE shall render an itemized bill to AIRLINE for the services rendered to it during the month. Such bill shall be payable not later than ten (10) days after receipt thereof by AIRLINE. Time of payment is of the essence of this agreement. Notwithstanding, if any part of the said invoice is not paid within thirty (30) days after date of said invoice, then AIRLINE agrees to pay, in addition to the said balance an additional amount equal to one percent (1%) per month on the unpaid balance until paid, to recompense TRIANGLE for the loss of available return on the payment due, agreed upon as being reasonable by both parties. This does not constitute a waiver on the part of TRIANGLE of any other remedy it may be entitled to hereunder by virtue of the said failure to pay the said invoice.

3-3 The basic charges set forth in Exhibit D are predicated upon requirements for manpower and equipment as determined from the flight activity schedules annexed hereto as Exhibits B and C. Should the actual schedule for the periods in question differ either in volume of flights,

1 aircraft types or arrival/departure times of flights from  
2 those set forth in Exhibits B or C or should average cargo  
3 load factors over any two week period exceed historic norms,  
4 then any additional manpower and equipment required for the  
5 performance of services hereunder will be determined by  
6 TRIANGLE, and an increase in the charges will be negotiated  
7 to the satisfaction of both parties upon ten (10) days  
8 notice to AIRLINE. The increased charge arrived at as a  
9 result of such negotiations shall apply retroactively to a  
10 date commencing ten (10) days after the receipt by the AIRLINE  
11 of the aforesaid ten (10) days notice. Failure by AIRLINE to  
12 proceed to negotiate such increase within twenty (20) days  
13 of the date of the notice shall be deemed to constitute  
14 agreement by AIRLINE to the increased charges as determined  
15 by TRIANGLE.

16 3-4 In the event that flights do not arrive or  
17 depart as scheduled or in the event that the actual schedules  
18 differ from those set forth in Exhibits B or C, then, if in  
19 order to provide the services set forth herein, TRIANGLE is  
20 required to use manpower working overtime, AIRLINE shall, in  
21 addition to other charges, pay TRIANGLE for such overtime at  
22 TRIANGLE's current rates. The rates presently in effect are  
23 set forth in Exhibit E. Such overtime shall include  
24 necessary standby time prior to aircraft arrival plus thirty  
25 (30) minutes following release from aircraft for servicing  
and returning equipment to Airport marshalling areas. Over-  
time charges will be assessed only in those instances when  
irregular operations or unscheduled multiple operations



1 cannot be covered with the manpower normally scheduled to work.  
2 TRIANGLE will submit to AIRLINE records for all such overtime.

3 3-5 In the event specialized equipment shall be  
4 required, TRIANGLE, where possible, will lease same for the  
5 time that such specialized equipment shall be required and  
6 AIRLINE shall pay to TRIANGLE the rental cost of such  
7 specialized equipment plus five per cent (5%), plus the  
8 applicable Port Authority Fee, provided however that AIRLINE  
9 has been notified of the lease arrangements in advance.

10 3-6 The charges set forth in this Agreement are  
11 established in the light of current employer contributions or  
12 payments for Social Security, Unemployment Insurance, New  
13 York State Disability Insurance, and the current pertinent  
14 Collective Bargaining Agreements of TRIANGLE. In addition,  
15 the charges are established in the light of other costs of  
16 TRIANGLE, in turn, related to labor costs, such as Port  
17 Authority Fees, certain insurance, etc. Accordingly, in the  
18 event the employer's contributions for Social Security,  
19 Unemployment Insurance, and/or New York State Disability  
20 Insurance are increased, and/or if any other charge of  
21 whatever kind or another is required by law to be paid by  
22 TRIANGLE to or on behalf of its employees, and/or if TRIANGLE  
23 incurs higher labor costs through higher wage rates and other  
24 employee benefits, then upon ten (10) days notice to AIRLINE,  
25 the parties hereto shall negotiate revision in the Basic  
Charge so as to include said increased cost resultant there-  
from. Failure by AIRLINE to proceed to negotiate such  
increase within twenty (20) days of the date of the notice

1 shall be deemed to constitute agreement by AIRLINE to the  
2 revised charges as determined by TRIANGLE.

3 The adjusted per plane turnaround charge arrived  
4 at as a result of negotiations shall become effective on the  
5 date designated by TRIANGLE which date shall not be prior to  
6 the date of said notice by TRIANGLE to AIRLINE except in the  
7 case of prolonged labor negotiations which results in a  
8 retroactive wage settlement in which case the date shall not  
9 be prior to the date to which such settlement is retroactive.

#### 10 ARTICLE IV

##### 11 Insurance and Indemnification

12 4-1 TRIANGLE shall maintain in effect at all  
13 times during the term hereof the following described  
14 insurance covering its operations and its activities hereunder  
15 in the amounts set forth below and shall furnish AIRLINE  
16 with a Certificate of Insurance certifying that such  
17 insurance is in full force and effect and that the insurer  
18 will notify AIRLINE ten (10) days prior to a cancellation or  
19 change.

20 Description	21 Limits of Liability
22 1. Workmen's Compensation 23 Employers Liability	24 Statutory as required
25 2. Comprehensive General Liability (bodily injury and property damage, including automobile, contractual, and products hazards)	\$5,000,000 each occurrence or each accident
3. Excess comprehensive general liability single limit on bodily injury and property damage.	\$15,000,000 each accident



1 4-2 AIRLINE and its subsidiaries, associates and  
2 affiliates hereby release TRIANGLE from and shall indemnify  
3 and hold harmless TRIANGLE against any and all claims,  
4 liabilities, losses, damages, fines or judgments, including  
5 all costs and expenses incident thereto, which may accrue  
6 against or be charged to, suffered by or recoverable from  
7 TRIANGLE by reason of:

8 (a) any loss, theft or disappearance of or  
9 damage to cargo (including without limitation mail and  
10 passenger baggage) arising out of or in any way connected with  
11 the furnishing by TRIANGLE, its agents or employees of services  
12 pursuant hereto;

13 (b) any delays in the arrival or departure  
14 of aircraft, cargo (including without limitation mail and  
15 passenger baggage), or passengers, and any loss of use of or  
16 loss of profits from or by such aircraft, cargo, passengers  
17 or other facilities used in connection therewith, whether  
18 or not caused by the negligence of TRIANGLE, its agents or  
19 employees.

20 4-3 TRIANGLE hereby releases AIRLINE from and  
21 shall indemnify and hold harmless AIRLINE against any and  
22 all claims, liabilities, causes of action, proceedings and  
23 any losses, damages, judgments, including all costs and  
24 expenses incident thereto, which may accrue against or be  
25 charged to, suffered by or recoverable from AIRLINE insofar  
as based on:

1 (a) any loss or damage to property of  
2 AIRLINE serviced by TRIANGLE pursuant hereto, other than  
3 property covered by Paragraph 4-2 hereof. When such loss or  
4 damage is caused solely by the negligence of TRIANGLE, its  
5 agents or employees;

6 (b) any injury to or death of any person  
7 other than officers, agents, or employees of AIRLINE (or its  
8 subsidiaries, associates or affiliates) arising out of the  
9 furnishing of services by TRIANGLE pursuant hereto and caused  
10 solely by the negligence of TRIANGLE its agents or employees.

11 4-4 TRIANGLE shall cause the foregoing agreement  
12 to indemnify and hold harmless AIRLINE to be insured either  
13 by causing AIRLINE to be named as additional insured under  
14 TRIANGLE's comprehensive general liability policy or by  
15 obtaining a contractual liability endorsement to said policy.  
16 The maintenance of such insurance as evidenced by a  
17 Certificate of Insurance furnished to AIRLINE, shall satisfy  
18 the entire liability of TRIANGLE under Paragraph 4-3 hereof.  
19 AIRLINE on behalf of itself, its subsidiaries, associates and  
20 affiliates, by the acceptance of such Certificate of Insurance,  
21 releases TRIANGLE from and agrees to indemnify and hold  
22 harmless TRIANGLE against any claims, liabilities, causes of  
23 action, proceedings, losses, damages, or judgments, including  
24 costs and expenses incident thereto, which may accrue against  
25 or be charged to, suffered by or recoverable from TRIANGLE  
insofar as they may be based on matters covered by Paragraph  
4-3 hereof and insofar as they are not covered by the  
aforesaid insurance.



1 4-5 The aforesaid insurance and the indemnific-  
2 ation and hold harmless obligation of TRIANGLE set forth in  
3 Paragraph 4-3 shall extend to and cover the property and  
4 liability of any subsidiary, associates or affiliated company  
5 of AIRLINE to which TRIANGLE is furnishing services hereunder  
6 pursuant to a currently effective notice under Paragraph 2-10  
7 hereof.

#### 8 ARTICLE V

#### 9 Beyond Control

10 TRIANGLE shall not be responsible for impairment  
11 or interruption of service, due to causes beyond the control  
12 of TRIANGLE, including without limitation weather, fire,  
13 earthquake, flood, windstorm, power shortages, labor disputes,  
14 war (whether declared or undeclared), riot, rebellion,  
15 embargoes, delays in deliveries of equipment, facilities and  
16 materials to TRIANGLE at the Airport, losses or damage to  
17 equipment, facilities and materials, shortages of labor and  
18 material, court orders, regulations or rulings of any  
19 governmental agency now existing or hereafter in effect, acts  
20 of GOD or any cause beyond the control of TRIANGLE, whether  
21 or not of the nature of character hereinbefore specifically  
22 enumerated, but nevertheless in the event of such  
23 impairment, interruption or curtailment, TRIANGLE shall use  
24 its reasonable best efforts to eliminate the cause thereof  
25 as soon as possible and in the interim to provide such  
services as are practicable.

ARTICLE VI

Duration

6-1 This Agreement shall be effective on the date hereof, shall continue in effect until 31 December 1975 and thereafter shall be automatically renewed for successive one year periods commencing on 1 January 1976 unless either party, not later than the preceding 1st of October gives notice to the other of its intention to terminate the agreement on the following

6-2 This Agreement may be terminated upon sixty (60) days prior written notice upon the happening of any of the following events:

(a) the failure or refusal of any Federal or other governmental authority, board, agency, or officer having jurisdiction over AIRLINE to grant AIRLINE the right to operate its aircraft into and from John F. Kennedy International Airport or upon withdrawal or revocation as such right by governmental authority, board, agency or officer, provided that such failure, refusal, revocation or withdrawal is not due to any act, request by or fault of AIRLINE;

(b) the discontinuance by AIRLINE of services to John F. Kennedy International Airport because of war or national emergency;

(c) the termination or suspension by the Authority of TRIANGLE's permit to perform the services provided for in this Agreement at the Airport;

(d) If either party files a voluntary petition in bankruptcy; (or) a petition in bankruptcy is



1 filed against either party and is not dismissed within thirty  
2 (30) days thereafter; (or) either party is adjudicated  
3 bankrupt; (or) a court takes and retains for at least thirty  
4 (30) days jurisdiction of the other's assets under a federal  
5 reorganization act; (or) a receiver of the other or a  
6 substantial portion of its assets is appointed by a court and  
7 such appointment is not vacated or stayed within thirty (30)  
8 days; (or) the other becomes insolvent or suspends business;  
9 or the other makes an assignment for the benefit of its  
creditors.

#### ARTICLE VII

##### Arbitration

Any and all controversies in connection with and/  
or arising out of this Agreement or the breach thereof shall  
be exclusively settled by arbitration in New York City  
according to the rules of the American Arbitration Association.  
Judgment upon the award may be entered in the Supreme Court  
of the State of New York or in any other court having  
jurisdiction thereof.

#### ARTICLE VIII

##### Miscellaneous

8-1 This Agreement may not be assigned by  
either party hereto, except that TRIANGLE may assign this  
Agreement to any associate, subsidiary, affiliated or  
successor corporations.

8-2 All notices required by this Agreement to be  
given by either party to the other shall be in writing and  
shall be sent to the recipient by registered mail, addressed,

1 in the case of TRIANGLE, to TRIANGLE AVIATION SERVICES, INC.,  
2 145-119 New York Boulevard, Jamaica, New York 11434  
3 and in the case of the AIRLINE, to ALERONAVES de MEXICO,  
4 500 Fifth Avenue, New York, New York 10036

5 Either party may change the address to which notices addressed  
6 to it should be sent by giving written notice to the other.

7 8-3 The entire contract between the parties is  
8 stated in this instrument. This contract supersedes all  
9 previous agreements written or oral and may be changed or  
10 supplemented only by a written memorandum executed on behalf  
11 of both parties.

12 8-4 This Agreement is subject at all times to  
13 all the terms and conditions of the Port Authority permit.

14 8-5 This Agreement shall be governed by and  
15 construed in accordance with the law of the State of New York.

16 IN WITNESS WHEREOF, the parties hereto have  
17 executed this Agreement as of the date and year first above  
18 written.

19  
20 Aeronaves de México, S.A.  
21 AIRLINE *[Signature]*  
22 BY *[Signature]*  
23 Ing. Raymundo Cano Pereira  
24 Director General

25 TRIANGLE  
BY *[Signature]*  
A. B. Anderson  
Vice-President



EXHIBIT A

Services Furnished by TRIANGLE

1. Aircraft to be Serviced.

The aircraft to be serviced pursuant hereto are of the following types:

DC 8/50 series Passenger Aircraft

DC 8/63 series Passenger Aircraft

2. Ramp Handling Services to be Performed

TRIANGLE shall:

- a) Ensure that manpower and equipment is available before actual arrival of aircraft at the gate.
- b) Provide, position and remove wheelchocks.
- c) Provide and operate suitable fire extinguishers during engine starting.
- d) Provide and operate suitable ground power units for supply of necessary electrical power.
- e) Provide and operate suitable aircraft starting equipment.
- f) Participate in engine start up procedures at AIRLINE direction.
- g) Report immediately to AIRLINE all damage noticed at or inside an aircraft irrespective of cause of time of occurrence.
- h) Provide, position and remove, connect and disconnect and operate air conditioning equipment to cool the aircraft interior in the summer and heating equipment to heat

INC. IRVING, TEXAS

1 same in the winter as requested by the AIRLINE.

2 i) Provide and operate suitable equipment for the  
3 replenishment of potable water in the aircraft water tanks.

4 j) Provide, position and remove passenger steps for  
5 each passenger aircraft movement.

6 k) Provide and operate suitable equipment for  
7 loading, unloading and transporting of baggage, cargo, mail  
8 and company materials, including ballast, except that AIRLINE  
9 will provide and maintain pallet dollies for transporting  
10 palletized freight.

11 l) Unload/load baggage, cargo, mail and any company  
12 materials, including ballast, and deliver/receive, together  
13 with relevant documents, if applicable, to/from the  
14 representative of and the Airport area designated by AIRLINE.

15 m) Secure baggage, cargo, mail and company materials,  
16 including ballast, in accordance with AIRLINE instruction.  
17 (AIRLINE will provide all necessary tie down equipment. If  
18 tie down materials are supplied by TRIANGLE then AIRLINE will  
19 be charged back at cost plus fifteen percent (15%) for tie  
20 down materials used.)

21 n) Secure and lock cargo holds.

22 o) Unload all mail, and deliver to Airport terminal  
23 post office within the prescribed U.S. time limit, and/or to  
24 AIRLINE designated Airport area in the case of online  
25 transfer mail.

26 p) Pick up the outbound mail from the Airport  
27 terminal post office at the prescribed time and deliver the  
28 relevant AV-7 forms to AIRLINE; pick up online transfer mail  
29 from AIRLINE designated Airport area.



1 q) Furnish necessary safety devices as mutually  
2 agreed upon and in accordance with local standards, to  
3 foregoing equipment in order to protect aircraft from damage.

4 r) Ensure that all passenger/crew baggage, cargo,  
5 mail and company material will be adequately protected from  
6 inclement weather conditions.

7 s) Ensure that cargo will be picked up at AIRLINE  
8 Airport cargo warehouse.

9 t) Report any irregularities in passenger/crew  
10 baggage, cargo, mail and company materials.

11 3. Ground Handling Time

12 The ground handling time during which the foregoing  
13 services, where applicable, will be furnished to the aircraft,  
14 and during which TRIANGLE will make manpower and equipment  
15 available for performing such services, shall be forty-five  
16 (45) minutes for arriving aircraft and sixty (60) minutes  
17 for departing aircraft.  
18  
19  
20  
21  
22  
23  
24  
25

(3)

MR. J. WING ZENGA PERET

1 4. Aircraft Cabin Cleaning Service

2 a) Lavatories

- 3 (1) Dump, flush and replenish with airline  
4 approved chemical solution.  
5 (2) Clean Lavatory bowls and seats  
6 (3) Clean Basins and Mirrors  
7 (4) Clean Floor  
8 (5) Remove and dispose of refuse

9 b) Passenger Cabin

- 10 (1) Straighten overhead racks  
11 (2) Replace pillow cases and headrest covers as  
12 directed (material stocked and supplied by  
13 AIRLINE).  
14 (3) Clean seat pockets and restock with AIRLINE  
15 supplied material as directed.  
16 (4) Clean Seat Trays  
17 (5) Empty Ash Trays  
18 (6) Clean seats and arrange belts  
19 (7) Vacuum carpet and spot clean as needed  
20 (8) Install door mat and aisle runner as  
21 directed.

22 c) Cockpit

- 23 (1) Clean windows  
24 (2) Empty ashtrays  
25 (3) Clean floors

d) Galleys

- (1) Remove and dispose of garbage and refuse  
(2) Clean and disinfect galley tables, storage  
space, and walls.

e) Lost and Found Property -

return to AIRLINE designated Representative.



EXHIBIT B



**AEROMEXICO**

AERONAVES DE MEXICO

EAST WING INTERNATIONAL ARRIVALS BUILDING  
JFK INTERNATIONAL AIRPORT, JAMAICA, N.Y. • 656-0175

1973 SUMMER FLIGHT SCHEDULE

Flight 400	DC-8-51	Daily
	ETD ACA	0745
	ETA MEX	0830/0915
	ETA JFK	1535
Flight 401	DC-8-51	Daily
	ETD JFK	1845
	ETA MEX	1920/2020
	ETA ACA	2105
Flight 404	DC-8-63	Daily EX TUE WED
	ETD ACA	1545
	ETA MEX	1630/1715
	ETA JFK	1935
Flight 406	DC-8-63	Daily EX WED THU
	ETD JFK	0800
	ETA MEX	1135/1245
	ETA ACA	1330
Flight 404	DC-8-51	TUE & WED
	ETD MEX	1715
	ETA JFK	1935
Flight 405	DC-8-51	WED & THU
	ETD JFK	0900
	ETA MEX	1135

JORGE L. RUIZ  
Director of Operations

PAUL H. PER  
Director of Sales & Marketing

ALISS W. REISCHKE  
Director of Finance & Administration

All local times.

For Foreign Flavor

See Mexico First

ING. IRVING ARJONA PEREZ

Exhibit C

Aeromexico

winter flight schedule similar to Exhibit B.

~~JORDI ENRIQUE RUIZ~~  
~~SECRETARY OF DEFENSE~~

~~CELOS M. ROISANCHEZ~~  
~~CHIEF OF DEFENSE~~

~~DR. JUAN J. J. J.~~  
~~DEFENSE~~

~~FRANCISCO J. J. J.~~  
~~DEFENSE~~

~~DEFENSE~~

~~ING. JUAN J. J. J.~~



EXHIBIT B

Aeromexico

Charge per Turnaround (includes insurance surcharge)

a. Passenger aircraft

	Effective through 3-31-74	Effective 4-1-74
EC 8/50 Series	\$681.50	\$716.50
EC 8/63 Series	\$731.50	\$816.50

The current schedule of charges shown heretofore is based upon the manpower utilization and equipment requirements determined from plotting the combined current Summer 1973 flight schedules from Iberia Airlines of Spain, Aeromexico Airlines, LAN-Chile Airline. Should any one of the aforementioned airlines revise its schedule or should any other change take place including withdrawal by one or more of the aforementioned airlines from the combined group, thus altering the flight schedule pattern either in the volume of flights, aircraft types and/or arrival/departure times, then the manpower and equipment required for the performance of services will be determined by Triangle and an increase in the charges will be negotiated in accordance with the provisions of Article III in the Basic Agreement.

*[Signature]*  
CARLOS M. BUSANICHE  
DIRECTOR DE SERVICIOS GUAJALTEPEC

*[Signature]*  
FRANCISCO ESCOBAR M.  
SEPT. 68 1973

*[Signature]*  
ING. IRVING ARRIANA PEREZ

EXHIBIT E

Aeromexico

Overtime Charge

\$11.75 per manhour

*[Handwritten signature]*  
IN THE CITY  
OF MEXICO

*[Handwritten signature]*  
DIRECTOR OF THE  
BUREAU OF INVESTIGATION

*[Handwritten signature]*  
CARLOS E. VILLARREAL  
SALVADOR DE MEXICO

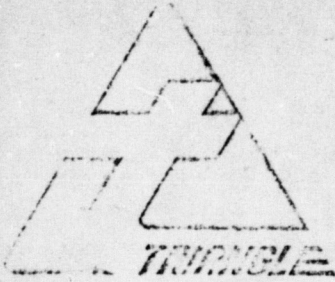
*[Handwritten signature]*  
FRANCISCO GONZALEZ

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*  
ING. JESUS MARIA PEREZ





# TRIANGLE AVIATION SERVICES, INC.

145-119 NEW YORK BOULEVARD

JAMAICA, N. Y. 11434

(212) 978-4200

May 2, 1974

Mr. C. Trejo  
Aero Mexico  
500 Fifth Avenue  
New York, New York 10036

Dear Mr. Trejo:

AM/RC-74/1

Pursuant to our recent discussions, we are submitting herewith a supplement to Exhibit D of the Basic Agreement between Aero Mexico and Triangle dated November 16, 1973 and effective June 1, 1974.

The insurance surcharge which was included in the basic handling fee must be adjusted slightly effective June 1, 1974 reflecting the increased unit cost resulting from reduced flight frequencies.

a. Charge per turnaround (includes insurance surcharge)

DC-8/50	Passenger Aircraft	\$ 725.15*
DC-8/63	Passenger Aircraft	\$ 825.15*
DC-10	Passenger Aircraft	\$1395.15*

b. Provision of Electrical Ground Power Unit daily for DC-10 (RON) Aircraft between the hours of 2300 and 1000 local time including maintenance and fuel for operation and monitoring by Aero Mexico maintenance Personnel.

Charge per month \$3252.20\*

c. It is anticipated that self-contained auxiliary power units in wide-bodied aircraft such as B747 and DC-10 will be functioning and utilized throughout normal ground time and that supplemental ground support equipment will normally not be required.

\* Subject to applicable New York Sales Tax.

A-27

EXHIBIT B

Mr. Trejo

- 2 -

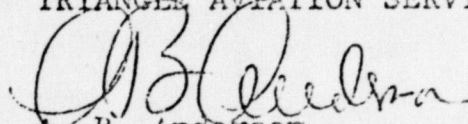
May 2, 1974

You may execute and return the duplicate original which will then constitute an amendment to the Basic Agreement.

Thank you.

Very truly yours,

TRIANGLE AVIATION SERVICES, INC.

  
A. B. Anderson  
Vice President

ACCEPTED AND AGREED TO:

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

ABA:lmw  
Enc.



May 14, 1974

LMCDA-239/74

Mr. A. B. Anderson  
Vice President  
Triangle Aviation Services, Inc.  
145-119 New York Blvd.  
Jamaica, N.Y. 11434

Dear Mr. Anderson:

This will acknowledge receipt of your letter of May 2, 1974. The charges which you have quoted in your letter are entirely unacceptable to AEROMEXICO. If you are prepared to quote substantially lower charges, we will be prepared to discuss them with you.

However, if you are not prepared to do so, would you notify us at your earliest convenience so that AEROMEXICO can make other arrangements to handle the aircraft at JTR.

In this connection I should point out to you that commencing May 31, 1974 AEROMEXICO intends to use DC-10-30 equipment on a daily basis.

Very truly yours, .

*[Signature]*  
District Manager

ST/cn

cc: Cypto. Oper. T  
Cemento Divisi  
Jale Aeropuert

269403

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

SENT TO		Mr. Anderson / Private	
STREET AND NO.		145-119 N.Y. Blvd.	
P.O., STATE AND ZIP CODE		JAMAICA, N.Y. 11434	
OPTIONAL SERVICES FOR ADDITIONAL FEES			
RETURN RECEIPT SERVICE	1. Shows to whom and date delivered	15¢	
	With delivery to addressee only	5¢	
	2. Shows to whom, date and where delivered	35¢	
	With delivery to addressee only	5¢	
DELIVER TO ADDRESSEE ONLY		5¢	
SPECIAL DELIVERY (extra fee required)			

POSTMARK  
OR DATE

5/14/74

EXHIBIT C

A-29

PS Form  
Apr. 1971 3800

NO INSURANCE COVERAGE PROVIDED—  
NOT FOR INTERNATIONAL MAIL

(See other side)  
GPO: 1974 O-74-700

May 21, 1974

NYCDA-250/74

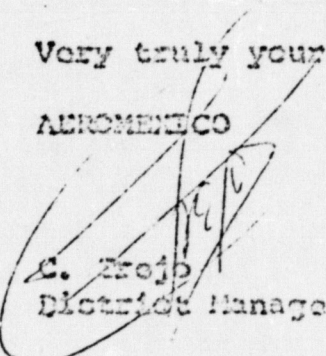
Mr. A. B. Anderson  
Vice President  
Triangle Aviation Services, Inc.  
145-119 New York Blvd.  
Jamaica, N.Y. 11434

Dear Mr. Anderson:

After checking with my Superiors, I have been requested to inform you that unless we receive quotations from you substantially lower than the ones previously given to us no later than 5:00 P.M. Wednesday May 22nd, we shall be obliged to make other arrangements to handle our DC-10 aircraft at John F. Kennedy Airport.

Very truly yours,

AEROMEXICO

  
C. Projo  
District Manager

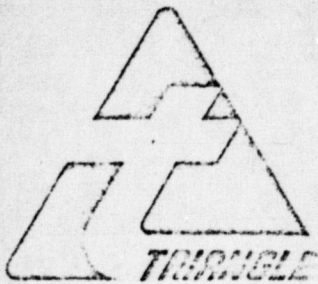
CT/cm

cc: Mr. Francisco Behovernie/AMX  
Mr. C. M. Gutierrez/MIA  
Mr. Antonio Projo/JFK

A-30

EXHIBIT D





# TRIANGLE AVIATION SERVICES, INC.

145-119 NEW YORK BOULEVARD

JAMAICA, N. Y. 11434

(212) 978-4206

May 22, 1974

Registered

Mr. C. Trejo  
District Manager  
Aero Mexico  
500 Fifth Avenue  
New York, New York 10036

AM/RC 74/2

Dear Mr. Trejo:

Your letters of May 14, 1974 and May 21, 1974 contained implied threats which are wholly inconsistent with the terms of our contract of November 16, 1973.

We invite your attention to Article VII of the agreement of November 16, 1973 between us.

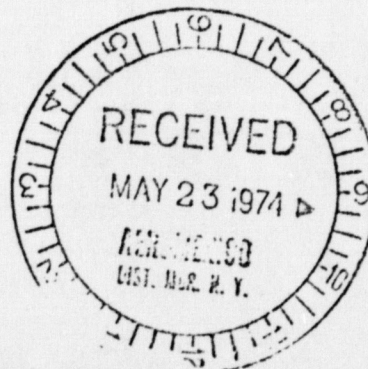
Since it appears that we may have reached an impasse, consideration must be given to arbitration rather than to the unilateral actions suggested in your letters.

Very truly yours,

TRIANGLE AVIATION SERVICES, INC.

A. P. Anderson  
Vice President

ABA:kmw

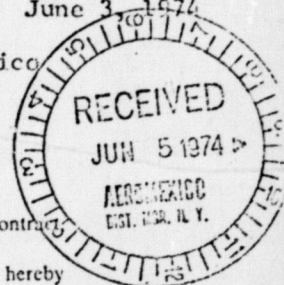


## COMMERCIAL ARBITRATION RULES

## DEMAND FOR ARBITRATION

DATE: June 3, 1974

TO: (Name) AERONAVES DE MEXICO, S.A., a/k/a Aeromexico  
 (of party upon whom the Demand is made)  
 (Address) 500 Fifth Avenue  
 (City and State) New York, N.Y. 10036



Named claimant, a party to an arbitration agreement contained in a written contract dated November 16, 1973, providing for arbitration, hereby demands arbitration thereunder.

(attach arbitration clause or quote hereunder)

See arbitration clause attached hereto and made a part hereof.

**NATURE OF DISPUTE:** By its terms, claimant's contract with Aeronaves expires Dec. 31, 1975. Contract calls for providing of cargo and line services (ramp services) to Aeronaves by claimant at J.F.K. airport. Aeronaves changed its aircraft from DC-8 types to DC-10. Pursuant to ~~XMAXIMUM OF DISPUTE~~ contract, claimant provided a new quoted price, the unresolved differences over which are to be arbitrated as per the said contract. Instead, Aeronaves has engaged another firm to do its ramp work, has refused to arbitrate the controversy over the new price, and has effectively terminated its contract with claimant, all in clear breach of the terms thereof. Aeronaves' position is that contract does not cover DC-10 aircraft. Claimant's position is that contract, not only by implication, but also by express reference thereto, provides for changes in prices if aircraft types or schedules, inter alia, are changed.

**CLAIM OR RELIEF SOUGHT:** (amount, if any) Award holding 1) that contract binds Aeronaves de Mexico, S.A. to employ claimant's service at J.F.K. airport until Dec. 31, 1975 in accordance with the terms thereof, regardless of the aircraft type it elects to use, whether in lieu of or in addition to DC-8's; 2) that all changes in price authorized by the contract, if not agreed to, must be arbitrated in accordance with the terms thereof, inclusive of price changes occasioned by changes in aircraft types; 3) that prices quoted by claimant for providing ramp

PLEASE TAKE FURTHER NOTICE, that unless within <sup>twenty</sup>ten days after service of this Notice of Intention to Arbitrate, you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

(Cont'd.  
on  
reverse  
side)

HEARING LOCALE REQUESTED: NEW YORK CITY, NEW YORK  
 (City and State)

You are hereby notified that copies of our arbitration agreement and of this demand are being filed with the American Arbitration Association at its NEW YORK Regional Office, with the request that it commence the administration of the arbitration. Under Section 7 of the Commercial Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

Signed BY: MILLER & SEEGER  
 (May be Signed by Attorney)

Name of Claimant Triangle Aviation Services, Inc.  
 Attorneys Address 660 Madison Avenue  
 Address (to be used in connection with this case)  
 City and State New York, N.Y. 10021  
 Telephone (212) PL-2-0350

To institute proceedings, please send <sup>two</sup>three copies of this Demand with the administrative fee, as provided in Section 12 of the R



services for Aeronaves' DC-10 flights are fair and justified, and must be paid; 4) that claimant is entitled to recover from Aeronaves, and Aeronaves is obligated to pay to claimant, a sum of money in an amount equal to all damages of whatever nature suffered by claimant by virtue of Aeronaves' breach of contract, inclusive of, but not limited to, lost fees, costs and disbursements, administrative fees, and legal fees, together with interest on the total amount awarded.

## ARTICLE VII

### Arbitration

Any and all controversies in connection with and/or arising out of this Agreement or the breach thereof shall be exclusively settled by arbitration in New York City according to the rules of the American Arbitration Association. Judgment upon the award may be entered in the Supreme Court of the State of New York or in any other court having jurisdiction thereof.





UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
AERONAVES DE MEXICO, S.A., :  
Plaintiff, :  
-against- : NOTICE OF MOTION  
TRIANGLE AVIATION SERVICES, INC., : TO STAY ARBITRATION  
Defendant. :  
----- x

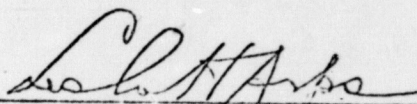
PLEASE TAKE NOTICE, that upon the annexed affidavit of Constantino Trejo, sworn to the 20th day of June, 1974, the defendant's Demand For Arbitration, the declaratory judgment complaint and all proceedings heretofore had herein, Aeronaves de Mexico, S.A. ("Aeromexico") will move this Court at Room , United States Courthouse, Foley Square, New York, New York, on the 10 day of July, 1974 at 9:30 o'clock in the fore noon of that day or as soon thereafter as counsel can be heard, for an Order directing that the arbitration sought to be commenced by defendant, Triangle Aviation Services, Inc. ("Triangle") be stayed, pending determination of the declaratory judgment action herein on the grounds, among others, that no valid agreement was made to arbitrate the matters in controversy; that plaintiff Aeromexico will be irreparably injured if the arbitration is not stayed pending determination of the

declaratory judgment action; and for such other and further relief as may be just, proper and equitable.

Dated: New York, New York  
June 21, 1974.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM

By



A Member of the Firm  
Attorneys for Plaintiff  
919 Third Avenue  
New York, New York 10022

TO:

MILLER AND SEEGER, ESQS.  
Attorneys for Defendant  
660 Madison Avenue  
New York, New York 10021



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
AERONAVES DE MEXICO, S.A., :  
Plaintiff, :  
-against- : AFFIDAVIT IN SUPPORT  
TRIANGLE AVIATION SERVICES, INC., : OF MOTION TO STAY  
Defendant. : ARBITRATION  
----- x

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK)

CONSTANTINO TREJO, being duly sworn, deposes and  
says as follows:

1. I am the New York District Manager for Aeronaves  
de Mexico, S.A. ("Aeromexico"), plaintiff herein, and I make  
this Affidavit in support of Aeromexico's Motion to Stay  
Arbitration. I am fully familiar with all of the facts sur-  
rounding this controversy.

2. Aeromexico is an international air carrier owned  
by Nacional Financiera, S.A., an official agency of the  
Government of Mexico. It serves the United States of America,  
Mexico, Canada and various other countries. In connection  
with its service, Aeromexico's aircraft fly into and out of John  
F. Kennedy International Airport ("JFK"), New York, carrying  
passengers and cargo to and from Mexico.

3. Ground services for Aeromexico's aircraft at JFK,  
including ramp service and aircraft cleaning, are performed

in part by Aeromexico employees and in part by others.

4. At all times relevant hereto, through and including May 31, 1974, ground services were performed for Aeromexico's aircraft by the defendant, Triangle Aviation Services, Inc. ("Triangle"), pursuant to a contract dated November 16, 1973 (the "Contract"), a copy of which is annexed hereto as Exhibit A.

5. The Contract provided for the furnishing of ground services for DC-8/50 and DC-8/63 passenger aircraft only. In the event Aeromexico were to operate a different aircraft type, the contract provided that "an increase in the charges will be negotiated to the satisfaction of both parties upon ten (10) days notice to" Aeromexico (Exhibit A, pages 4 and 5 and Exhibit D annexed to the Contract).

6. Some time prior to May 2, 1974 Aeromexico notified Triangle that it intended to operate DC-10 aircraft into and out of JFK and requested that Triangle furnish a quotation of its charges if it were to perform such services.

7. On May 2, 1974 Triangle submitted a quotation, a copy of which is annexed hereto as Exhibit B.

8. Aeromexico considered these charges unacceptable and so notified Triangle on May 14, 1974 (Exhibit C hereto) and stated:

"If you are prepared to quote substantially lower charges, we will be prepared to discuss them with you.

However, if you are not prepared to do so, would you notify us at your earliest convenience so that AEROMEXICO can make other arrangements to handle the aircraft at JFK."



It should be pointed out that in this letter Aeromexico advised Triangle that Aeromexico intended to put the DC-10-30 equipment into service on a daily basis commencing on May 31, 1974. In this connection, the putting into service of the DC-10-30 required a great deal of planning and coordinating with government agencies of both the United States and Mexico and delay or postponement would be most difficult and humiliating. Of these facts Triangle was well aware.

9. Although Triangle knew that time was of the essence, Triangle failed to respond to Aeromexico's request and on May 21, 1974 Aeromexico notified Triangle that unless Triangle submitted a substantially lower quotation by 5:00 p.m., May 22, 1974, Aeromexico would make other arrangements for the provision of services for its DC-10-30 aircraft. A copy of that letter is annexed hereto as Exhibit D.

10. Triangle failed to accede to Aeromexico's request and, by letter dated May 22, 1974, a copy of which is annexed hereto as Exhibit E, Triangle stated, among other things, that "it appears that we may have reached an impasse".

11. At this point in time, the arrival of Aeromexico's first DC-10 aircraft was imminent and Aeromexico had to make other arrangements for the servicing of the DC-10-30 aircraft.

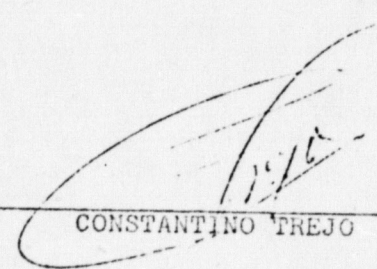
12. On June 5, 1974, Aeromexico was served with a Demand for Arbitration by Triangle, a copy of which is annexed hereto as Exhibit F.

13. It is and always was my understanding that the Contract between Aeromexico and Triangle related exclusively to

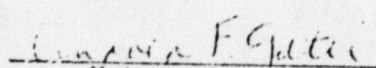
DC-8/50 and DC-8/63 aircraft and that in the event that other aircraft types were operated into or out of JFK, Aeromexico and Triangle were obligated to attempt to negotiate charges for the provision of services to such aircraft. Such charges would only be imposed, however, if the parties were able to agree to their mutual satisfaction.

14. It was never contemplated that if the parties failed to agree, an arbitrator was empowered to set the charges for services which were not provided for in the Contract itself. Also it is evident from the correspondence (Exhibits B, C, D and E) that Triangle never really intended to negotiate. It is obviously Triangle's view that it could unilaterally fix a price - an exorbitant one, I might add - without consulting or negotiating with Aeromexico.

15. For the reasons set forth above and in the accompanying Memorandum of Law, I respectfully request that the Court grant Aeromexico's Motion to Stay the arbitration herein pending the determination of Aeromexico's action for declaratory judgment.

  
CONSTANTINO TREJO

Sworn to before me this  
20th day of June, 1974.

  
Notary Public

ANDREA F. GATTI  
Notary Public, State of New York  
No. 31-4506477  
Qualified in New York County  
Commission Expires March 30, 1975



1 AGREEMENT, made as of this sixteenth day of November, 1973  
2 by and between TRIANGLE AVIATION SERVICES, INC. having  
3 its principal place of business at 145-119 New York Boulevard,  
4 Jamaica, New York 11434 (hereinafter called TRIANGLE)  
5 and AERONAVES de MEXICO having an office at  
6 500 Fifth Avenue, New York, New York (hereinafter called  
7 AIRLINE). 10036

8 WITNESSETH:

9 WHEREAS, TRIANGLE is engaged in the business of  
10 furnishing cargo and line services to air carriers engaged in  
11 air transportation at the John F. Kennedy International Airport  
12 (hereinafter called the Airport) pursuant to a permit issued  
13 by the Port Authority of New York and New Jersey (hereinafter  
14 called the Authority), and

15 WHEREAS, AIRLINE desires to engage TRIANGLE to furnish  
16 such services to AIRLINE.

17 NOW, THEREFORE, in consideration of the promises and  
18 covenants to each other made, and other good and valuable  
19 consideration, TRIANGLE and AIRLINE agree as follows:

20 ARTICLE I

21 Performance of Services

22 TRIANGLE shall furnish, at the Airport, to aircraft of  
23 AIRLINE and of subsidiary, associated or affiliated companies  
24 of AIRLINE (as defined in the lease or contract between  
25 AIRLINE and the Authority, the services enumerated in  
Exhibit A attached hereto, and AIRLINE hereby employs TRIANGLE  
to furnish such services to it and to said subsidiary,  
associated or affiliated companies.

EXHIBIT A

ARTICLE II

Cooperation by AIRLINE

2-1 In order to permit performance of the afore-said services in a timely and efficient manner, AIRLINE shall cooperate with TRIANGLE in accordance with reasonable requests made by TRIANGLE. Without limiting the generality of the foregoing, AIRLINE shall, as to itself and its subsidiary, associated and affiliated companies, comply with the following provisions of this Article II.

2-2 AIRLINE shall submit to TRIANGLE not later than the 15th day of each month its flight movement advisory or plan showing the scheduled movements for the subsequent month. AIRLINE shall notify TRIANGLE immediately of any changes in such flight movement advisory or plan and of any additional aircraft movements.

2-3 AIRLINE shall submit to TRIANGLE on or before February 1st of each year the flight patterns and operational characteristics for each of the subsequent months of April through October or for such other span of months as AIRLINE considers to comprise its summer flight schedule. The current information is attached hereto as Exhibit B.

2-4 AIRLINE shall submit to TRIANGLE on or before August 1st of each year the flight patterns and operational characteristics for such of the subsequent months of November through March or for such other span of months as AIRLINE considers to comprise its winter flight schedule. The current information is attached hereto as Exhibit C.



1 2-5 AIRLINE shall notify TRIANGLE as soon as  
2 possible of the estimated time of arrival of each aircraft and  
3 of the gate assigned to such arriving aircraft and of any  
4 revisions thereto.

5 2-6 AIRLINE shall notify TRIANGLE reasonably in  
6 advance of the actual time of arrival of each inbound aircraft  
7 as to whether mail is to be unloaded and delivered to the  
8 Airport U.S. Mail Depot and of special handling requirements,  
9 if any, for baggage and cargo to be unloaded from such  
10 arriving aircraft.

11 2-7 AIRLINE shall notify TRIANGLE reasonably in  
12 advance of any change in the estimated time of departure of  
13 each outbound aircraft and of the gate assigned to each such  
14 aircraft and when baggage, cargo or mail to be loaded on said  
15 aircraft requires special handling.

16 2-8 AIRLINE shall provide all necessary tie down  
17 equipment for cargo loaded by TRIANGLE.

18 2-9 AIRLINE shall unload TRIANGLE's cargo  
19 transportation containers within one (1) hour of delivery  
20 to AIRLINE cargo warehouse in order to make said containers  
21 available for other operations.

22 2-10 AIRLINE shall give written notice to TRIANGLE  
23 of any subsidiary, affiliated or associated companies to which  
24 AIRLINE wants TRIANGLE to render services hereunder, and  
25 TRIANGLE shall be entitled to rely on such notice until it is  
revoked in writing by AIRLINE.

ARTICLE III

Charges

3-1 AIRLINE shall pay to TRIANGLE the basic charges as set forth in Exhibit D, attached hereto. Each arrival or each departure shall be considered a separate plane movement. An aircraft arrival and departure shall be considered an aircraft turnaround or transit. Said basic charges shall be adjusted as provided hereinafter.

3-2 As of the last day of each calendar month during the term hereof TRIANGLE shall render an itemized bill to AIRLINE for the services rendered to it during the month. Such bill shall be payable not later than ten (10) days after receipt thereof by AIRLINE. Time of payment is of the essence of this agreement. Notwithstanding, if any part of the said invoice is not paid within thirty (30) days after date of said invoice, then AIRLINE agrees to pay, in addition to the said balance an additional amount equal to one percent (1%) per month on the unpaid balance until paid, to recompense TRIANGLE for the loss of available return on the payment due, agreed upon as being reasonable by both parties. This does not constitute a waiver on the part of TRIANGLE of any other remedy it may be entitled to hereunder by virtue of the said failure to pay the said invoice.

3-3 The basic charges set forth in Exhibit D are predicated upon requirements for manpower and equipment as determined from the flight activity schedules annexed hereto as Exhibits B and C. Should the actual schedule for the periods in question differ either in volume of flights,



1 aircraft types or arrival/departure times of flights from  
2 those set forth in Exhibits B or C or should average cargo  
3 load factors over any two week period exceed historic norms,  
4 then any additional manpower and equipment required for the  
5 performance of services hereunder will be determined by  
6 TRIANGLE, and an increase in the charges will be negotiated  
7 to the satisfaction of both parties upon ten (10) days  
8 notice to AIRLINE. The increased charge arrived at as a  
9 result of such negotiations shall apply retroactively to a  
10 date commencing ten (10) days after the receipt by the AIRLINE  
11 of the aforesaid ten (10) days notice. Failure by AIRLINE to  
12 proceed to negotiate such increase within twenty (20) days  
13 of the date of the notice shall be deemed to constitute  
14 agreement by AIRLINE to the increased charges as determined  
15 by TRIANGLE.

16 3-4 In the event that flights do not arrive or  
17 depart as scheduled or in the event that the actual schedules  
18 differ from those set forth in Exhibits B or C, then, if in  
19 order to provide the services set forth herein, TRIANGLE is  
20 required to use manpower working overtime, AIRLINE shall, in  
21 addition to other charges, pay TRIANGLE for such overtime at  
22 TRIANGLE's current rates. The rates presently in effect are  
23 set forth in Exhibit E. Such overtime shall include  
24 necessary standby time prior to aircraft arrival plus thirty  
25 (30) minutes following release from aircraft for servicing  
and returning equipment to Airport marshalling areas. Over-  
time charges will be assessed only in those instances when  
irregular operations or unscheduled multiple operations

1 cannot be covered with the manpower normally scheduled to work.  
2 TRIANGLE will submit to AIRLINE records for all such overtime.

3 3-5 In the event specialized equipment shall be  
4 required, TRIANGLE, where possible, will lease same for the  
5 time that such specialized equipment shall be required and  
6 AIRLINE shall pay to TRIANGLE the rental cost of such  
7 specialized equipment plus five per cent (5%), plus the  
8 applicable Port Authority Fee, provided however that AIRLINE  
has been notified of the lease arrangements in advance.

9 3-6 The charges set forth in this Agreement are  
10 established in the light of current employer contributions or  
11 payments for Social Security, Unemployment Insurance, New  
12 York State Disability Insurance, and the current pertinent  
13 Collective Bargaining Agreements of TRIANGLE. In addition,  
14 the charges are established in the light of other costs of  
15 TRIANGLE, in turn, related to labor costs, such as Port  
16 Authority Fees, certain insurance, etc. Accordingly, in the  
17 event the employer's contributions for Social Security,  
18 Unemployment Insurance, and/or New York State Disability  
19 Insurance are increased, and/or if any other charge of  
20 whatever kind or another is required by law to be paid by  
21 TRIANGLE to or on behalf of its employees, and/or if TRIANGLE  
22 incurs higher labor costs through higher wage rates and other  
23 employee benefits, then upon ten (10) days notice to AIRLINE,  
24 the parties hereto shall negotiate revision in the Basic  
25 Charge so as to include said increased cost resultant there-  
from. Failure by AIRLINE to proceed to negotiate such  
increase within twenty (20) days of the date of the notice



1 shall be deemed to constitute agreement by AIRLINE to the  
2 revised charges as determined by TRIANGLE.

3 The adjusted per plane turnaround charge arrived  
4 at as a result of negotiations shall become effective on the  
5 date designated by TRIANGLE which date shall not be prior to  
6 the date of said notice by TRIANGLE to AIRLINE except in the  
7 case of prolonged labor negotiations which results in a  
8 retroactive wage settlement in which case the date shall not  
be prior to the date to which such settlement is retroactive.

9 ARTICLE IV

10 Insurance and Indemnification

11 4-1 TRIANGLE shall maintain in effect at all  
12 times during the term hereof the following described  
13 insurance covering its operations and its activities hereunder  
14 in the amounts set forth below and shall furnish AIRLINE  
15 with a Certificate of Insurance certifying that such  
16 insurance is in full force and effect and that the insurer  
17 will notify AIRLINE ten (10) days prior to a cancellation or  
change.

18	Description	Limits of liability
19	1. Workmen's Compensation Employers Liability	Statutory as required
20	2. Comprehensive General Liability (bodily injury and property 21 damage, including automobile, 22 contractual, and products hazards)	\$5,000,000 each occurrence or each accident
23	3. Excess comprehensive general liability single limit on 24 bodily injury and property 25 damage.	\$15,000,000 each accident

1 4-2 AIRLINE and its subsidiaries, associates and  
2 affiliates hereby release TRIANGLE from and shall indemnify  
3 and hold harmless TRIANGLE against any and all claims,  
4 liabilities, losses, damages, fines or judgments, including  
5 all costs and expenses incident thereto, which may accrue  
6 against or be charged to, suffered by or recoverable from  
7 TRIANGLE by reason of:

8 (a) any loss, theft or disappearance of or  
9 damage to cargo (including without limitation mail and  
10 passenger baggage) arising out of or in any way connected with  
11 the furnishing by TRIANGLE, its agents or employees of services  
12 pursuant hereto;

13 (b) any delays in the arrival or departure  
14 of aircraft, cargo (including without limitation mail and  
15 passenger baggage), or passengers, and any loss of use of or  
16 loss of profits from or by such aircraft, cargo, passengers  
17 or other facilities used in connection therewith, whether  
18 or not caused by the negligence of TRIANGLE, its agents or  
19 employees.

20 4-3 TRIANGLE hereby releases AIRLINE from and  
21 shall indemnify and hold harmless AIRLINE against any and  
22 all claims, liabilities, causes of action, proceedings and  
23 any losses, damages, judgments, including all costs and  
24 expenses incident thereto, which may accrue against or be  
25 charged to, suffered by or recoverable from AIRLINE insofar  
as based on:



1 (a) any loss or damage to property of  
2 AIRLINE serviced by TRIANGLE pursuant hereto, other than  
3 property covered by Paragraph 4-2 hereof. When such loss or  
4 damage is caused solely by the negligence of TRIANGLE, its  
5 agents or employees;

6 (b) any injury to or death of any person  
7 other than officers, agents, or employees of AIRLINE (or its  
8 subsidiaries, associates or affiliates) arising out of the  
9 furnishing of services by TRIANGLE pursuant hereto and caused  
10 solely by the negligence of TRIANGLE its agents or employees.

11 4-4 TRIANGLE shall cause the foregoing agreement  
12 to indemnify and hold harmless AIRLINE to be insured either  
13 by causing AIRLINE to be named as additional insured under  
14 TRIANGLE's comprehensive general liability policy or by  
15 obtaining a contractual liability endorsement to said policy.  
16 The maintenance of such insurance as evidenced by a  
17 Certificate of Insurance furnished to AIRLINE, shall satisfy  
18 the entire liability of TRIANGLE under Paragraph 4-3 hereof.  
19 AIRLINE on behalf of itself, its subsidiaries, associates and  
20 affiliates, by the acceptance of such Certificate of Insurance,  
21 releases TRIANGLE from and agrees to indemnify and hold  
22 harmless TRIANGLE against any claims, liabilities, causes of  
23 action, proceedings, losses, damages, or judgments, including  
24 costs and expenses incident thereto, which may accrue against  
25 or be charged to, suffered by or recoverable from TRIANGLE  
insofar as they may be based on matters covered by Paragraph  
4-3 hereof and insofar as they are not covered by the  
aforesaid insurance.

1 4-5 The aforesaid insurance and the indemnifica-  
2 tion and hold harmless obligation of TRIANGLE set forth in  
3 Paragraph 4-3 shall extend to and cover the property and  
4 liability of any subsidiary, associate or affiliated company  
5 of AIRLINE to which TRIANGLE is furnishing services hereunder  
6 pursuant to a currently effective notice under Paragraph 2-10  
7 hereof.

8 ARTICLE V

9 Beyond Control

10 TRIANGLE shall not be responsible for impairment  
11 or interruption of service, due to causes beyond the control  
12 of TRIANGLE, including without limitation weather, fire,  
13 earthquake, flood, windstorm, power shortages, labor disputes,  
14 war (whether declared or undeclared), riot, rebellion,  
15 embargoes, delays in deliveries of equipment, facilities and  
16 materials to TRIANGLE at the Airport, losses or damage to  
17 equipment, facilities and materials, shortages of labor and  
18 material, court orders, regulations or rulings of any  
19 governmental agency now existing or hereafter in effect, acts  
20 of GOD or any cause beyond the control of TRIANGLE, whether  
21 or not of the nature of character hereinbefore specifically  
22 enumerated, but nevertheless in the event of such  
23 impairment, interruption or curtailment, TRIANGLE shall use  
24 its reasonable best efforts to eliminate the cause thereof  
25 as soon as possible and in the interim to provide such  
services as are practicable.



ARTICLE VI

Duration

6-1 This Agreement shall be effective on the date hereof, shall continue in effect until 31 December 1975 and thereafter shall be automatically renewed for successive one year periods commencing on 1 January 1976 unless either party, not later than the preceding 1st of October gives notice to the other of its intention to terminate the agreement on the following

6-2 This Agreement may be terminated upon sixty (60) days prior written notice upon the happening of any of the following events:

(a) the failure or refusal of any Federal or other governmental authority, board, agency, or officer having jurisdiction over AIRLINE to grant AIRLINE the right to operate its aircraft into and from John F. Kennedy International Airport or upon withdrawal or revocation as such right by governmental authority, board, agency or officer, provided that such failure, refusal, revocation or withdrawal is not due to any act, request by or fault of AIRLINE;

(b) the discontinuance by AIRLINE of services to John F. Kennedy International Airport because of war or national emergency;

(c) the termination or suspension by the Authority of TRIANGLE's permit to perform the services provided for in this Agreement at the Airport;

(d) If either party files a voluntary petition in bankruptcy; (or) a petition in bankruptcy is

1 filed against either party and is not dismissed within thirty  
2 (30) days thereafter; (or) either party is adjudicated  
3 bankrupt; (or) a court takes and retains for at least thirty  
4 (30) days jurisdiction of the other's assets under a federal  
5 reorganization act; (or) a receiver of the other or a  
6 substantial portion of its assets is appointed by a court and  
7 such appointment is not vacated or stayed within thirty (30)  
8 days; (or) the other becomes insolvent or suspends business;  
9 or the other makes an assignment for the benefit of its  
10 creditors.

#### 11 ARTICLE VII

##### 12 Arbitration

13 Any and all controversies in connection with and/  
14 or arising out of this Agreement or the breach thereof shall  
15 be exclusively settled by arbitration in New York City  
16 according to the rules of the American Arbitration Association.  
17 Judgment upon the award may be entered in the Supreme Court  
18 of the State of New York or in any other court having  
19 jurisdiction thereof.

#### 20 ARTICLE VIII

##### 21 Miscellaneous

22 8-1 This Agreement may not be assigned by  
23 either party hereto, except that TRIANGLE may assign this  
24 Agreement to any associate, subsidiary, affiliated or  
25 successor corporations.

26 8-2 All notices required by this Agreement to be  
27 given by either party to the other shall be in writing and  
28 shall be sent to the recipient by registered mail, addressed,



1 in the case of TRIANGLE, to TRIANGLE AVIATION SERVICES, INC.,  
2 145-119 New York Boulevard, Jamaica, New York 11434  
3 and in the case of the AIRLINE, to AERONAVES de MEXICO,  
4 500 Fifth Avenue, New York, New York 10036

5 Either party may change the address to which notices addressed  
6 to it should be sent by giving written notice to the other.

7 8-3 The entire contract between the parties is  
8 stated in this instrument. This contract supersedes all  
9 previous agreements written or oral, and may be changed or  
10 supplemented only by a written memorandum executed on behalf  
11 of both parties.

12 8-4 This Agreement is subject at all times to  
13 all the terms and conditions of the Port Authority permit.

14 8-5 This Agreement shall be governed by and  
15 construed in accordance with the law of the State of New York.

16 IN WITNESS WHEREOF, the parties hereto have  
17 executed this Agreement as of the date and year first above  
18 written.

19  
20 Aeronaves de México, S.A.  
21 AIRLINE *[Signature]*  
22 BY *[Signature]*  
23 Ing. Raymundo Cano Pereira  
24 Director General

25 TRIANGLE  
BY *[Signature]*  
A. B. Anderson  
Vice-President

EXHIBIT A

Services Furnished by TRIANGLE

1. Aircraft to be Serviced.

The aircraft to be serviced pursuant hereto are of the following types:

DC 3/50 series Passenger Aircraft

DC 8/63 series Passenger Aircraft

2. Ramp Handling Services to be Performed

TRIANGLE shall:

- a) Ensure that manpower and equipment is available before actual arrival of aircraft at the gate.
- b) Provide, position and remove wheelchocks.
- c) Provide and operate suitable fire extinguishers during engine starting.
- d) Provide and operate suitable ground power units for supply of necessary electrical power.
- e) Provide and operate suitable aircraft starting equipment.
- f) Participate in engine start up procedures at AIRLINE direction.
- g) Report immediately to AIRLINE all damage noticed at or inside an aircraft irrespective of cause of time of occurrence.
- h) Provide, position and remove, connect and disconnect and operate air conditioning equipment to cool the aircraft interior in the summer and heating equipment to heat

INC. 10/10/63 10/10/63 10/10/63



1 same in the winter as requested by the AIRLINE.

2 i) Provide and operate suitable equipment for the  
3 replenishment of potable water in the aircraft water tanks.

4 j) Provide, position and remove passenger steps for  
5 each passenger aircraft movement.

6 k) Provide and operate suitable equipment for  
7 loading, unloading and transporting of baggage, cargo, mail  
8 and company materials, including ballast, except that AIRLINE  
9 will provide and maintain pallet dollies for transporting  
10 palletized freight.

11 l) Unload/load baggage, cargo, mail and any company  
12 materials, including ballast, and deliver/receive, together  
13 with relevant documents, if applicable, to/from the  
14 representative of and the Airport area designated by AIRLINE.

15 m) Secure baggage, cargo, mail and company materials,  
16 including ballast, in accordance with AIRLINE instruction.  
17 (AIRLINE will provide all necessary tie down equipment. If  
18 tie down materials are supplied by TRIANGLE then AIRLINE will  
19 be charged back at cost plus fifteen percent (15%) for tie  
20 down materials used.)

21 n) Secure and lock cargo holds.

22 o) Unload all mail, and deliver to Airport terminal  
23 post office within the prescribed U.S. time limit, and/or to  
24 AIRLINE designated Airport area in the case of online  
25 transfer mail.

26 p) Pick up the outbound mail from the Airport  
27 terminal post office at the prescribed time and deliver the  
28 relevant AV-7 forms to AIRLINE; pick up online transfer mail  
29 from AIRLINE designated Airport area.

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1 q) Furnish necessary safety devices as mutually  
2 agreed upon and in accordance with local standards, to  
3 foregoing equipment in order to protect aircraft from damage.

4 r) Ensure that all passenger/crew baggage, cargo,  
5 mail and company material will be adequately protected from  
6 inclement weather conditions.

7 s) Ensure that cargo will be picked up at AIRLINE  
8 Airport cargo warehouse.

9 t) Report any irregularities in passenger/crew  
10 baggage, cargo, mail and company materials.

11 3. Ground Handling Time

12 The ground handling time during which the foregoing  
13 services, where applicable, will be furnished to the aircraft,  
14 and during which TRIANGLE will make manpower and equipment  
15 available for performing such services, shall be forty-five  
16 (45) minutes for arriving aircraft and sixty (60) minutes  
17 for departing aircraft.

18  
19  
20  
21  
22  
23  
24  
25  
  
  
(3)

  
MR. LIVING LANCIA STREET



4. Aircraft Cabin Cleaning Service

a) Lavatories

- (1) Dump, flush and replenish with airline approved chemical solution.
- (2) Clean Lavatory bowls and seats
- (3) Clean Basins and Mirrors
- (4) Clean Floor
- (5) Remove and dispose of refuse

b) Passenger Cabin

- (1) Straighten overhead racks
- (2) Replace pillow cases and headrest covers as directed (material stocked and supplied by AIRLINE).
- (3) Clean seat pockets and restock with AIRLINE supplied material as directed.
- (4) Clean Seat Trays
- (5) Empty Ash Trays
- (6) Clean seats and arrange belts
- (7) Vacuum carpet and spot clean as needed
- (8) Install door mat and aisle runner as directed.

c) Cockpit

- (1) Clean windows
- (2) Empty ashtrays
- (3) Clean floors

d) Galleys

- (1) Remove and dispose of garbage and refuse
- (2) Clean and disinfect galley tables, storage space, and walls.

e) Lost and Found Property -

return to AIRLINE designated Representative.

EXHIBIT B



**AEROMEXICO**

AERONAVES DE MEXICO

EAST WING INTERNATIONAL ARRIVALS BUILDING  
JFK INTERNATIONAL AIRPORT, JAMAICA, N.Y. • 656-0175

1973 SUMMER FLIGHT SCHEDULE

Flight 400	DC-8-51	Daily
	ETD ACA	0745
	ETA MEX	0830/0915
	ETA JFK	1035
Flight 401	DC-8-51	Daily
	ETD JFK	1845
	ETA MEX	1910/2020
	ETA ACA	2105
Flight 404	DC-8-63	Daily EX TUE WED
	ETD ACA	1545
	ETA MEX	1630/1715
	ETA JFK	1835
Flight 405	DC-8-63	Daily EX WED THU
	ETD JFK	0900
	ETA MEX	1135/1245
	ETA ACA	1330
Flight 404	DC-8-51	TUE & WED
	ETD MEX	1715
	ETA JFK	1835
Flight 405	DC-8-51	WED & THU
	ETD JFK	0900
	ETA MEX	1135

All local times.

JORGE L. AND RUIZ  
AGENTS DE AVIACION

PAUL J. PERE  
AGENTS DE AVIACION

PAUL M. PERE  
AGENTS DE AVIACION

PAUL M. PERE  
AGENTS DE AVIACION

See Foreign Flavor

See Mexico First

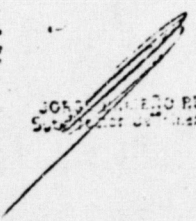
ING. IRVING ARJONA PEREZ




Exhibit C

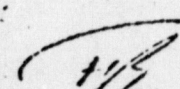
Aeromexico


winter flight schedule similar to Exhibit B.

  
JOSE LUIS RUIZ  
Subdirector de Operaciones

  
CARLOS A. LUISENROTH  
Gerente de Operaciones Generales

  
ING. ENRIQUE CANALES  
Director General de Operaciones

  
FRANCISCO TREVIÑO  
Subdirector de Operaciones

  
ING. ENRIQUE CANALES


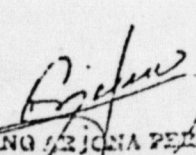
  
  
ING. ENRIQUE CANALES

EXHIBIT B

Aeromexico

Charge per Turnaround (includes insurance surcharge)

a. Passenger Aircraft

	Effective through 3-31-74	Effective 4-1-74
EC 8/50 Series	\$681.50	\$716.50
EC 8/63 Series	\$731.50	\$816.50

The current schedule of charges shown heretofore is based upon the manpower utilization and equipment requirements determined from plotting the combined current Summer 1973 flight schedules from Iberia Airlines of Spain, Aeromexico Airlines, LAN-Chile Airline. Should any one of the aforementioned airlines revise its schedule or should any other change take place including withdrawal by one or more of the aforementioned airlines from the combined group, thus altering the flight schedule pattern either in the volume of flights, aircraft types and/or arrival/departure times, then the manpower and equipment required for the performance of services will be determined by Triangle and an increase in the charges will be negotiated in accordance with the provisions of Article III in the Basic Agreement.

*[Signature]*  
Director of Operations

*[Signature]*  
CARLOS M. RUIZARTE  
GERENTE DE SERVICIOS COMERCIALES

*[Signature]*  
FRANCISCO RODRIGUEZ M.  
SUITE DE ADMINISTRACION

*[Signature]*  
ING. IRVING ARRIANA PEREZ

*[Signature]*  
ING. IRVING ARRIANA PEREZ



EXHIBIT E

Aeromexico

Overtime Charge

\$11.75 per manhour

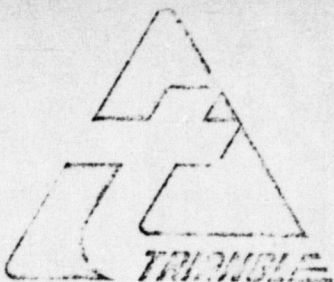
*φ*  
BY *PH* *PH*  
EXECUTIVE SECRETARY

*PH*  
CARLOS E. RIVERA  
DIRECTOR OF INVESTIGATION

*PH*  
CARLOS E. RIVERA  
DIRECTOR OF INVESTIGATION

*PH*  
CARLOS E. RIVERA  
DIRECTOR OF INVESTIGATION

*PH*  
INC. INVESTIGATION  
DIRECTOR OF INVESTIGATION



# TRIANGLE AVIATION SERVICES, INC.

145-119 NEW YORK BOULEVARD

JAMAICA, N. Y. 11434

(212) 978-4200

May 2, 1974

Mr. C. Trejo  
Aero Mexico  
500 Fifth Avenue  
New York, New York 10036

Dear Mr. Trejo:

AM/RC-74/1

Pursuant to our recent discussions, we are submitting herewith a supplement to Exhibit D of the Basic Agreement between Aero Mexico and Triangle dated November 16, 1973 and effective June 1, 1974.

The insurance surcharge which was included in the basic handling fee must be adjusted slightly effective June 1, 1974 reflecting the increased unit cost resulting from reduced flight frequencies.

a. Charge per turnaround (includes insurance surcharge)

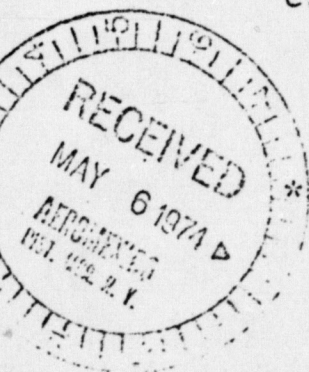
DC-8/50	Passenger Aircraft	\$ 725.15*
DC-8/63	Passenger Aircraft	\$ 825.15*
DC-10	Passenger Aircraft	\$1395.15*

b. Provision of Electrical Ground Power Unit daily for DC-10 (RON) Aircraft between the hours of 2300 and 1000 local time including maintenance and fuel for operation and monitoring by Aero Mexico maintenance Personnel.

Charge per month \$3252.20\*

c. It is anticipated that self-contained auxiliary power units in wide-bodied aircraft such as B747 and DC-10 will be functioning and utilized throughout normal ground time and that supplemental ground support equipment will normally not be required.

\* Subject to applicable New York Sales Tax.





Mr. Trejo

- 2 -

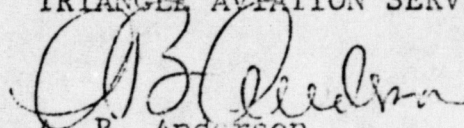
May 2, 1974

You may execute and return the duplicate original which will then constitute an amendment to the Basic Agreement.

Thank you.

Very truly yours,

TRIANGLE AVIATION SERVICES, INC.

  
A. B. Anderson  
Vice President

ACCEPTED AND AGREED TO:

NAME \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

ABA:kmw  
Enc.

May 14, 1974

EMCDA-200/74

Mr. A. B. Anderson  
Vice President  
Triangle Aviation Services, Inc.  
145-119 New York Blvd.  
Jamaica, N.Y. 11434


Dear Mr. Anderson:

This will acknowledge receipt of your letter of May 2, 1974. The charges which you have quoted in your letter are entirely unacceptable to AEROMEXICO. If you are prepared to quote substantially lower charges, we will be prepared to discuss them with you.

However, if you are not prepared to do so, would you notify us at your earliest convenience so that AEROMEXICO can make other arrangements to handle the aircraft at JFK.

In this connection I should point out to you that commencing May 31, 1974 AEROMEXICO intends to use DC-10-30 equipment on a daily basis.

Very truly yours,

  
J. E.  
District Manager

GT/cn

cc: Crypto. Oper. T  
Comento Divisi  
Jefe Aeropuerto

269403

RECEIPT FOR CERTIFIED MAIL—30c (plus postage)

SENT TO		Mr. Anderson / Jamaica	
STREET AND NO.		145-119 N.Y. Blvd.	
P.O. STATE AND ZIP CODE		JAMAICA, N.Y. 11434	
OPTIONAL SERVICES FOR ADDITIONAL FEES			
RETURN RECEIPT	1. Shows to whom and date delivered	15c	
SERVICES	With delivery to addressee only	65c	
	2. Shows to whom, date and where delivered	15c	
	With delivery to postoffice only	15c	
DELIVER TO ADDRESSEE ONLY			
SPECIAL DELIVERY (extra fee required)			

POSTMARK  
OR DATE

5/14/74

EXHIBIT C

A-64

PS Form 3800  
Apr. 1971

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See other side)  
• GPO 1970 O-587-405



May 21, 1974

NYCDA-250/74

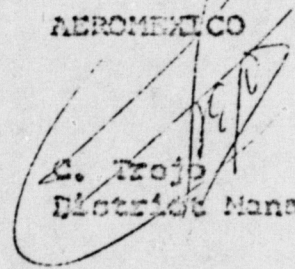
Mr. A. B. Anderson  
Vice President  
Triangle Aviation Services, Inc.  
145-119 New York Blvd.  
Jamaica, N.Y. 11434

Dear Mr. Anderson:

After checking with my Superiors, I have been requested to inform you that unless we receive quotations from you substantially lower than the ones previously given to us no later than 5:00 P.M. Wednesday May 22nd, we shall be obliged to make other arrangements to handle our DC-10 aircraft at John F. Kennedy Airport.

Very truly yours,

AEROMEXICO

  
C. Trejo  
District Manager

CT/cn

cc: Mr. Francisco Schoverria/MEX  
Mr. C. H. Candelero/MIA  
Mr. Antonio Proga/JFK



# TRIANGLE AVIATION SERVICES, INC.

145-119 NEW YORK BOULEVARD

JAMAICA, N. Y. 11434

(212) 978-4206

May 22, 1974

Registered

Mr. C. Trejo  
District Manager  
Aero Mexico  
500 Fifth Avenue  
New York, New York 10036

AM/RC 74/2

Dear Mr. Trejo:

Your letters of May 14, 1974 and May 21, 1974 contained implied threats which are wholly inconsistent with the terms of our contract of November 16, 1973.

We invite your attention to Article VII of the agreement of November 16, 1973 between us.

Since it appears that we may have reached an impasse, consideration must be given to arbitration rather than to the unilateral actions suggested in your letters.

Very truly yours,

TRIANGLE AVIATION SERVICES, INC.

*A. B. Anderson*  
A. B. Anderson  
Vice President

ABA:kaw

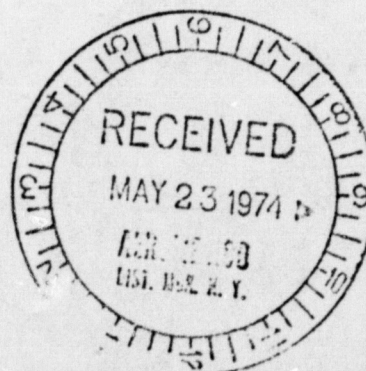


EXHIBIT E

A-66



COMMERCIAL ARBITRATION RULES

DEMAND FOR ARBITRATION

DATE: June 3, 1974

TO: (Name) AERONAVES DE MEXICO, S.A., a/l/a Aeromexico  
(of party upon whom the Demand is made)  
(Address) 500 Fifth Avenue  
(City and State) New York, N.Y. 10036



Named claimant, a party to an arbitration agreement contained in a written contract dated November 16, 1973, providing for arbitration, hereby demands arbitration thereunder.

(attach arbitration clause or quote hereunder)

See arbitration clause attached hereto and made a part hereof.

**NATURE OF DISPUTE:** By its terms, claimant's contract with Aeronaves expires Dec. 31, 1975. Contract calls for providing of cargo and line services (ramp services) to Aeronaves by claimant at J.F.K. airport. Aeronaves changed its aircraft from DC-8 types to DC-10. Pursuant to ~~XXXXXX~~ contract, claimant provided a new quoted price, the unresolved differences over which are to be arbitrated as per the said contract. Instead, Aeronaves has engaged another firm to do its ramp work, has refused to arbitrate the controversy over the new price, and has effectively terminated its contract with claimant, all in clear breach of the terms thereof. Aeronaves' position is that contract does not cover DC-10 aircraft. Claimant's position is that contract, not only by implication, but also by express reference thereto, provides for changes in prices if aircraft types or schedules, inter alia, are changed.

**CLAIM OR RELIEF SOUGHT:** (amount, if any) Award holding 1) that contract binds Aeronaves de Mexico, S.A. to employ claimant's service at J.F.K. airport until Dec. 31, 1975 in accordance with the terms thereof, regardless of the aircraft type it elects to use, whether in lieu of or in addition to DC-8's; 2) that all changes in price authorized by the contract, if not agreed to, must be arbitrated in accordance with the terms thereof, inclusive of price changes occasioned by changes in aircraft types; 3) that prices quoted by claimant for providing ramp

PLEASE TAKE FURTHER NOTICE, that unless within <sup>twenty</sup> days after service of this Notice of Intention to Arbitrate, you apply to stay the arbitration herein, you shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.

(Cont'd on reverse side)

HEARING LOCALE REQUESTED: NEW YORK CITY, NEW YORK  
(City and State)

You are hereby notified that copies of our arbitration agreement and of this demand are being filed with the American Arbitration Association at its NEW YORK Regional Office, with the request that it commence the administration of the arbitration. Under Section 7 of the Commercial Arbitration Rules, you may file an answering statement within seven days after notice from the Administrator.

Signed BY: MILLER & SEEGER  
(May be Signed by Attorney)

Name of Claimant Triangle Aviation Services, Inc.  
Attorneys Address 660 Madison Avenue  
Address (to be used in connection with this case) New York, N.Y. 10021  
City and State (212) PL-2-0250  
Telephone

To institute proceedings, please submit two copies of this Demand with the administrative fee, as provided in Section 1 of the Rules.

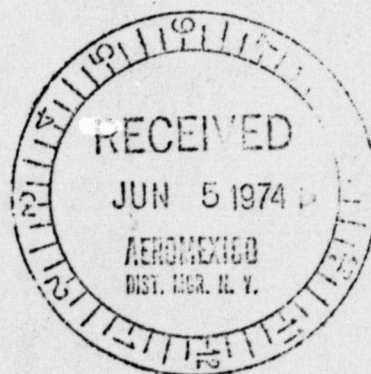
services for Aeronaves' DC-10 flights are fair and justified, and must be paid; 4) that claimant is entitled to recover from Aeronaves, and Aeronaves is obligated to pay to claimant, a sum of money in an amount equal to all damages of whatever nature suffered by claimant by virtue of Aeronaves' breach of contract, inclusive of, but not limited to, lost fees, costs and disbursements, administrative fees, and legal fees, together with interest on the total amount awarded.



## ARTICLE VII

### Arbitration

Any and all controversies in connection with and/or arising out of this Agreement or the breach thereof shall be exclusively settled by arbitration in New York City according to the rules of the American Arbitration Association. Judgment upon the award may be entered in the Supreme Court of the State of New York or in any other court having jurisdiction thereof.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
AERONAVES DE MEXICO, S.A.,

: 74 Civ. 2691

Plaintiff,

: AFFIDAVIT IN OPPOSITION  
: TO MOTION TO STAY  
: ARBITRATION

-against-

TRIANGLE AVIATION SERVICES, INC.,

: (CLB)

Defendant.

:  
----- x

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

A. B. ANDERSON, being duly sworn, deposes and says:

1. I am Vice-President of Triangle Aviation Services, Inc., ("Triangle"), defendant herein, and am fully familiar with the facts and circumstances of this case.

2. I make this affidavit in opposition to plaintiff's motion for a stay of arbitration.

3. I have read the affidavit of Constantino Trejo, sworn to June 20, 1974. Not only does it contain a number of extraordinary statements, but also, there are some extraordinary omissions. I propose to demonstrate the validity of this comment.

4. I believe that a brief recital of the relevant history of Triangle's relationship with Aeronaves would be



helpful to the Court. There are a number of corporations bearing the name, "Triangle", all commonly owned and directed (together with a few in which that name does not appear); this is equally true for the corporations providing ramp service. All are generally referred to as Triangle corporations by customers and others, regardless of which particular Triangle corporation is actually involved. The reason for the establishment and maintenance of these corporations is best explained by our tax advisers but, in any event, the differing identities are irrelevant to any of the issues here.

Some years back, one of these "sister corporations", Triangle Espana Aviation Services, Inc. ("Triangle Espana"), entered into a contract with Iberia Airlines of Spain, and it has maintained contractual relations with that company ever since. The first was made as of January 1, 1970, and the second was made as of December 1, 1970. It is this latter one which is still in effect, and by its terms, continues until December 31, 1975 (there are also automatic renewal provisions), unless sooner terminated pursuant to the provisions thereof.

5. While Mr. Trejo's affidavit does not disclose this, Triangle Espana did the ramp work for plaintiff Aeronaves at John F. Kennedy International Airport ("JFK"), starting about September 1, 1970. Plaintiff was not billed by Triangle Espana; Iberia was billed, because Aeronaves was represented by Iberia,

who, in turn (on information and belief) billed Aeronaves for this ramp work, inter alia. The contract with Iberia, made as of December 1, 1970, in fact took into account the fleet both of Iberia and Aeronaves and, in 1971, Lan-Chile (the Chilean airline) was added to the fleet. The point made by Iberia - and observed by Triangle Espana - was that this volume should be reflected in the price, and so it was.

6. Sometime early in 1973, Aeronaves (through Mr. Trejo) approached me and proposed a separate contract for Aeronaves. He told me that he would thus avoid Iberia's billing, which contained a 10% "add on" to Triangle Espana's bills, to cover Iberia's additional administrative costs, and, perhaps, others of which I am not aware. Mr. Trejo additionally indicated that another reason was what he believed to be considerations of Mexican national pride and airline prestige. I immediately informed Iberia of Aeronaves' desire for an independent contract, and Iberia (through Mr. Ramon Rico, then and now Iberia's station manager at JFK) stated it had no objection, provided no increase in the rates charged it (inclusive of Lan-Chile's aircraft) resulted from this separate contract.

Aeronaves also took that position. Notwithstanding it wanted a separate contract, it insisted that it continue to have the same rates charged it as would be charged under the Iberia "umbrella", and that it was not to be treated, price-wise, as if it were separate. This position actually eventuated, and



I respectfully direct the Court's attention to Exhibit A (particularly, Exhibit D thereof), annexed to Mr. Trejo's affidavit.

It will there be seen that the charges to Aeronaves are specifically predicated on the combined schedules and flight pattern and activity of Iberia, Lan-Chile and Aeronaves combined.

(That one Triangle corporation was signatory to a contract covering a portion of the "fleet" and another Triangle corporation was signatory to another contract covering the rest of the "fleet", is, of course, of no moment, except that it delineates the indicated lack of relevancy, for all present purposes, of the identity of the particular Triangle corporation party to the contract).

7. By virtue of the foregoing, it is no surprise that the basic charge for each Aeronaves DC-8 aircraft turnaround (in Exhibit D of the contract attached to Mr. Trejo's affidavit) had to be, and was so set out as, precisely the same as that set out for the rest of the DC-8's in the fleet, e.g., DC-8's flown by Iberia. The actual charge for Aeronaves DC-8's was \$11.50 more. This difference per aircraft turnaround was based solely on the fact that the Aeronaves contract eventuated in additional insurance coverage not called for or warranted under the Iberia contract. This was made known to Mr. Trejo as long ago as February, 1973, when he was told, in writing, that the annual premium for this additional insurance would be \$3,000.00. (See Exhibit 1, annexed hereto and made a part hereof; and Exhibit 1 is

a copy of a letter from me to Mr. Trejo, dated February 26, 1973). Aeronaes accepted this, of course, and this amount was to be amortized, as it were, by an extra charge per turnaround (\$8,000.00 per year divided by 693 turnarounds per year, or \$11.50 per turnaround).

8. In sum, Aeronaes' contract is substantially similar to Iberia's, has the same termination date (Dec. 31, 1975), with the same renewal provisions (but with no sixty day termination clause, as is true of Iberia's) and quotes the same price for DC-8's, save for this slight, extra, insurance addendum necessitated by Aeronaes' special requirements in that regard. There were no problems, no doubts, no differences, and no arguments, except that Aeronaes took more than six months to get the contract through its management mill, notwithstanding the contract had originally been intended to become effective August 1, 1973, (see my letter to Mr. Trejo, dated August 31, 1973, a copy of which is annexed hereto, made a part hereof, and marked Exhibit 2). A presently pertinent, semantic difference of significance does appear in the Aeronaes contract, however, and this relates to the specific reference to changes in aircraft types (see Article 3-3 of Exhibit A, attached to Mr. Trejo's affidavit; see, also, Exhibit D attached to that Exhibit) as among the various contingencies which would give rise to price changes, to be treated as set out in Article 3-3 of the contract, that is, Exhibit A. This express semantic provision came about because of a prior dispute with Iberia, eventually settled.



9. The separate contract with Aeronaves was sent to Mr. Trejo, for the appropriate signature or signatures, by letter dated April 5, 1973. A copy of that letter is annexed hereto, made a part hereof, and labeled Exhibit 3. Not only does it confirm the previous statements, but also, it shows that the basic charge for the servicing of a DC-10 turnaround was set with Iberia, for the latter's own DC-10 service, this at a time when Iberia was representing Aeronaves (and Lan-Chile, of course). That letter also confirms the additional \$11.50 charge per turnaround, based, obviously, on 693 turnarounds per year. (There is a typographical error in that letter - instead of a basic charge of \$1,370.00 per DC-10 turnaround effective April 1, 1974, it should have been \$1,375.00, which is what was to be charged Iberia, effective April, 1974; prior to that, the DC-10 turnaround rate was \$1,350.00). It must be added that, at that time, Aeronaves did not have the DC-10's in operation and it was still not definitely decided, so far as we knew, that they would be in operation. Accordingly, no reference thereto was made in the contract with Aeronaves, but, of course, there were the provisions for changes in schedules, and, more particularly, express provisions for changes in aircraft types. And, it will further be noted, from the language in that letter, that no question was even remotely noted or entertained with respect to the proposition that, given this fleet-wide basis for prices, some of the DC-10's would be serviced at one basic price while others would

be serviced at a different basic price. To put it another way, since Iberia would pay a basic price of \$1,375.00 per DC-10 turnaround effective April 1, 1974, we would not and could not charge Aeronaves more, nor could we or would we charge it less. We heard nothing from Aeronaves to contest this proposition.

These charges were again set out in a letter dated October 19, 1973, a copy of which was sent to Mr. Trejo, at his request, to reconfirm the post April 1, 1974, DC-10 rate - once again, a basic price of \$1,375.00, plus \$11.50, or \$1,386.50 per DC-10 turnaround. A copy of our October 19, 1973 letter is annexed hereto, made a part hereof, and labeled Exhibit 4. Of course, Iberia has been charged \$1,350.00 per DC-10 turnaround until April 1, 1974. Apparently, scheduled DC-10 operations by Iberia into JFK ceased at that time, but an occasional DC-10 does come in. Indeed, as late as July 1, 1974, an Iberia DC-10 arrived and, for the turnaround, Iberia paid the post April 1, 1974 price, to wit, \$1,375.00.

10. It is possible to question the complete relevancy of all of the foregoing vis-a-vis the issue of arbitrability but, in addition to providing background information, the purpose of this recital is to demonstrate the grievously erroneous impression Mr. Trejo's affidavit purports to convey, to wit, at just about the last minute, on May 2, 1974, (see Exhibit B in Mr. Trejo's affidavit) Triangle came up with an exorbitant quote. Patently, it did no such thing. The price for a DC-10 turnaround set out therein was \$1,395.15, or the same old \$1,375.00, this time plus \$20.15. The latter was increased from the original \$11.50 because the revised Aeronaves schedule provided for just under 400 annual



turnarounds, as opposed to the originally contemplated 693. That changed the \$11.50 to \$20.15. Otherwise, the price charged was the same price quoted back in early 1973 (notwithstanding increases in costs), and still predicated on a fleet-wide basis. A separate calculation for Aeronaves alone would have, in and of itself, resulted in a higher price.

11. Mr. Tejo says Triangle never intended to negotiate. The above facts demonstrate, beyond any doubt, that Iberia, the negotiator for the fleet, long before Aeronaves acquired its DC-10, had negotiated the DC-10 prices, on which Aeronaves sat for over a year. Separate and apart from the question as to its power to do so after Iberia properly set the price, Aeronaves in fact never raised the question of price until May of 1974. What presumably has happened, plainly and simply, is that a competitor of Triangle, one of the Allied Maintenance corporations (Allied apparently has a corporate setup similar to ours), with full knowledge of Aeronaves' contract with us, approached Aeronaves (and others), and sought to induce Aeronaves (and others) to break their contracts with us. Our attorneys advise that, among other things, this would be in violation of New York law, which governs our contracts (see Article 8-5 of Exhibit A) and Triangle expects that, in due course, it will take appropriate measures against Allied (and any others, unions or otherwise, cooperating with Allied in this sort of conduct).

What is now more relevant is that Exhibit D attached to the contract with Aeronaves, as well as Article 3-3 of that contract, sets out a whole series of eventualities in any part of the combined fleet, which could lead to price changes to be "negotiated," to wit,

1. Changes in the volume of flights
2. Changes in aircraft types
3. Changes in arrival or departure times
4. Specified changes in average cargo loads.

We repeat, as Exhibit D annexed to Exhibit A makes clear, price changes are to be negotiated if any one of the three carriers making up the fleet is responsible for any of these alterations.

I must further respectfully refer the Court to Article 3-6 of the Aeronaves contract, wherein negotiations for price increases are mandated in the event of an increase in the labor and other costs referred to therein. I do not discuss this further because, when a revision of rates (including those for DC-10's) was negotiated with Iberia in March of 1973, when Aeronaves had not yet received its separate contract for signature, I committed Triangle to absorb the increases to be negotiated by its contracted labor union, which increases, as it turned out, would have resulted in higher rates than those now in effect had Triangle not made this commitment. Of course, Aeronaves is also a beneficiary of this commitment. Increases in other costs referred to (Social Security, insurance, etc.) have similarly been absorbed, for Iberia and Lan-Chile, as well as Aeronaves.

12. Now, Mr. Trejo states, in paragraph 13 of his



affidavit, that it was always his understanding that the contract between plaintiff and Triangle related exclusively to DC-8's, and that a change in aircraft type brings about negotiations, the failure of which destroys the contract. Indeed, that is the essence of plaintiff's position. Such an interpretation, I must frankly say, and apart from the fact it has never been previously articulated, directly or indirectly, is the height of absurdity.

We have just shown that any number of situations lead to negotiations for price changes, not just this (unwarrantedly selective) change in aircraft type, on which Aeronaves has seized, while this change in aircraft type is referred to in the very same paragraphs (Exhibit D attached to Exhibit A; Article 3-3 of Exhibit A) as the other changes above listed. I would again call the Court's attention to those paragraphs, and to Article 3-6 of Exhibit A, for it will there be seen that, despite all the references to the negotiations that must take place on the happening of any of a number of changes (so as, obviously enough, to provide Triangle with the usual escalation protection), not one single word is to be found as to what happens if the negotiations fail - not one single word, there or any other place in the contract, except for the all inclusive arbitration clause, which covers "any and all controversies in connection with and/or arising out of this Agreement or the breach thereof." Accordingly, Aeronaves may not claim that the contract fails only if negotiations arising out of a change in aircraft type fail. It must

follow that Aeronaves is claiming the contract fails if any negotiations, arising out of any of the myriad changes set out, fail. For example, if Lan-Chile, not Aeronaves, changed its schedule (so that, again for example, a working crew might have to be called in at an isolated time of day), the whole fleet price would have to be recalculated. And, if these recalculated prices were, for any reason, unsatisfactory and the ensuing negotiations failed, then, so Aeronaves' position must be, the contract fails, too. Or, suppose Aeronaves decided not to abandon its DC-8's, but only to change their arrival and departure times by a couple of hours, let us say. A whole fleet recalculation would have to be made and, if the prices were unsatisfactory to Aeronaves, Aeronaves has it that the contract ends. Thus, by the mere device of a change in arrival or departure time, and a refusal to be satisfied with a resultant price change, Aeronaves' claim is that it is entitled to terminate its contract! This is so absurd as to warrant the peremptory dismissal of such a position. What would the arbitration clause, this enormously broad arbitration clause, mean, in the light of such a position? What is it supposed to cover? Indeed, is not the resolution of unresolved negotiations, over price changes occasioned by contractually envisioned eventualities, its chief function? In fact, what is the significance of the termination date, December 31, 1975, if the contract can be so easily defeated prior thereto? While counsel will undoubtedly cover this point technically, I can only repeat, once again, that the contract expressly envisaged, among other things, changes in aircraft types, and that it



contains what we are advised is, and believe to be, an arbitration clause of extreme scope and breadth, more than ample to cover unresolved negotiations over price changes occasioned by a change in aircraft type, (as well as those occasioned by the other changes listed).

I regret to say that I must dispute Mr. Trejo's word, when he claims he always thought the contract "related exclusively" to DC-8's, and that it was optional with Aeronaves whether to continue the contract if it disagreed with the price set for aircraft other than DC-8's. There was never any question about it, and he never raised the point at all until now.

13. I make clear that I do not in any way waive our claim that the DC-10 rate was negotiated at a time when Iberia was the negotiator for the fleet, and that Aeronaves sat on this for a year without any question or dispute (wholly apart from the very real point that it had no power to alter the negotiated price, save to the extent that it might have tried to influence Iberia not to accept the changes set and thereby send Iberia to arbitration). I also make clear that, as is evident from the Exhibits attached to Mr. Trejo's affidavit, if negotiations, arguendo, could validly be had, it was Aeronaves that really refused to negotiate. Exhibits C and D, attached to that affidavit, make it as clear as crystal that Aeronaves, after all the elapsed time referred to, simply told Triangle, in May of 1974, to cut down "substantially" (whatever that is supposed to mean) the charge agreed to with Iberia the year before and, if not,

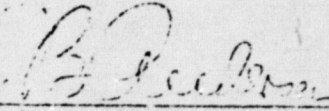
Triangle would be finished as of May 31, 1974 (in which event, parenthetically, what was supposed to happen to the fleet prices governing Iberia and Lan-Chile?) "Cut down substantially, or else" is not negotiation. Nor is Mr. Trejo correct when he says, in par. 9 of his affidavit, that we failed to respond. We responded by telling him the substance of the foregoing. He simply was not satisfied and, in fact, Aeronaves has withheld moneys due us for services rendered prior to the institution of its DC-10 flights, for which redress will also have to be sought.

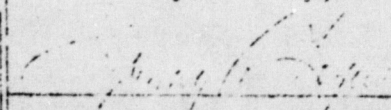
14. Finally, I again direct attention to the Exhibits attached hereto and to Exhibit B, attached to Mr. Trejo's affidavit. The wording employed reveals, quite plainly, that we were not providing Aeronaves with quotations in the usual sense, for, as Mr. Trejo uses the word, he is purporting to claim that Aeronaves had the legal right, during the contract term, to solicit bids from others and award them a contract during its term. We deny, of course, that Aeronaves had any such right.

15. By virtue of the foregoing, and as explicated in the brief submitted by our attorneys, Triangle prays that the motion for a stay be denied.

Sworn to before me this

16<sup>th</sup> day of July, 1974.

  
A. B. Anderson

  
IRVING A. LOGUE

NOTARY PUBLIC, State of New York  
My Comm. Expires 12/31/75  
City of New York, N.Y.  
Commission Expires 12/31/75



February 26, 1973

Mr. Constantino Trejo  
District Manager  
Aeromexico  
500 Fifth Avenue  
New York, New York

Dear Mr. Trejo:

Pursuant to your request regarding insurance costs, our Insurance Division received the following quotation from the underwriters:

The additional insurance coverage under the ramp service contract for Aeromexico would cost approximately \$8,000.00 additional per year.

I hope that this information will be helpful to you. Should further questions arise, please call me.

Very truly yours,

TRIANGLE MAINTENANCE CORP.

A. B. Anderson  
Vice President

ABA/md

EXH. 1

A-83

August 31, 1973

Mr. C. Trejo  
Aero Mexico  
500 Fifth Avenue  
New York, New York 10036

Dear Mr. Trejo:

On July 10, you advised me that Aero Mexico was ready to sign a separate contract for Ramp Handling and Aircraft Cleaning services. This contract had been previously submitted April 5, 1973. At that time, we understood that the contract was to be effective August 1, 1973 and we accordingly notified the insurance underwriters to place into effect the excess liability covered in Article IV of the Agreement.

We were required to place a premium deposit of \$6,000. Since the agreement has not yet been executed and to avoid further costs we will be required to terminate the excess liability coverage on September 6th if an agreement between Triangle and Aero Mexico is not executed on or before that date.

Please understand it is not our intent to do anything that would jeopardize our relationship. However, because of the substantial cost of the excess liability which was presumed with the understanding that our agreement was to be executed as of August 1, we must eliminate this extra cost burden as quickly as possible. It would then only be necessary for us to reinstate the coverage at such time as the agreement between us would be executed.

Sincerely,

TRIANGLE AVIATION SERVICES, INC.

A. B. Anderson  
Vice President

ABA:jjh

EXH. 2

A-84



April 5, 1973

Mr. Constantino Trajo  
District Manager  
Aeromexico  
300 Fifth Avenue  
New York, New York 10036

AM/RC-73/1

Dear Mr. Trajo:

In accordance with your request we are pleased to enclose herewith three copies of the proposed agreement between Aeromexico and Triangle.

The charges contained in Exhibit "D" reflect those recently negotiated with Iberia and are based upon the volume of flight activity by aircraft type and time of operation derived from combination of the flight schedule patterns of Aeromexico, Iberia and TAM-Chile. A surcharge of \$11.50 per turnaround has been added to reflect the special insurance coverage required by Aeromexico and the modification of the "hold harmless" clause in Article IV of the Basic Agreement.

The DC-10 Passenger Aircraft handling turnaround charge has been set with Iberia at \$1,350 this year and effective April 1, 1974 to \$1,370. If and when Aeromexico commences DC-10 operations - the aforementioned charges would prevail subject to an additional insurance charge of \$11.50 per turnaround.

I look forward to meeting with the appropriate officials of Aeromexico to execute the Agreement.

If you have any questions please call me at 636-7955.

Thank you.

Very truly yours,

TRIANGLE AVIATION SERVICES, INC.

Exh. J

A.D. Anderson  
Vice President

ABA/md  
Encs.

October 19, 1973

Mr. Anthony Prego  
Station Manager  
Aero Mexico  
John F. Kennedy Intern'l Airport  
Jamaica, New York 11430

C O N F I D E N T I A L

AM/RC-73/2

Dear Mr. Prego:

In accordance with your request, we are pleased to confirm the DC10-30 Passenger Aircraft Ground Handling Charge under the terms and conditions contained in the contract submitted to Aero Mexico April 5, 1973.

Charge Per Turnaround - including Ramp Handling and Cabin Interior Cleaning:

<u>Aircraft</u>	<u>Ramp Handling</u>	<u>Cleaning</u>	<u>Total</u>
DC10-30	\$1,120.50	\$266.00	\$1,386.50 (per turnaround)

The handling charge quoted includes all of the necessary equipment and manpower to provide the handling as enumerated in the agreement. We appreciate this opportunity to continue serving Aero Mexico.

A copy of our latest aviation division brochure is included along with an additional copy which may be forwarded to your office in Mexico.

Very truly yours,

TRIANGLE AVIATION SERVICES, INC.

A.B. Anderson  
Vice President

ABA:jjh  
Enc.  
cc: C. Trejo



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
AERONAVES DE MEXICO, S.A., :  
Plaintiff, :  
-against- : 74 Civ. 2691  
TRIANGLE AVIATION SERVICES, INC., : SUPPLEMENTAL AFFIDAVIT  
Defendant. : IN SUPPORT OF MOTION  
: TO STAY ARBITRATION  
----- x

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

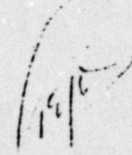
CONSTANTINO TREJO, being duly sworn, deposes and says:

1. Having read the affidavit of A. B. Anderson, sworn to on July 10, 1974, submitted in opposition to plaintiff's motion to stay arbitration (the "Anderson Aff't"), I make this supplemental affidavit for the purpose of refuting certain inaccurate statements therein.

2. As for Mr. Anderson's contention that Aeronaves de Mexico, S.A. ("Aeromexico") is bound by a contract which was executed on its behalf in 1970 by Iberia Airlines of Spain (Anderson Aff't, p. 6), I refer the Court to Article 8-3 of the 1973 contract executed by Aeromexico and Triangle Aviation Services, Inc. ("Triangle"), which states "the entire contract between the parties is stated in this instrument. This contract supersedes all previous agreements written or oral. . . ." (Trejo Aff't, Exh. A, p. 13). In this connection, I should point out that the contract was drafted by Triangle, not by Aeromexico, and submitted to Aeromexico for signature.

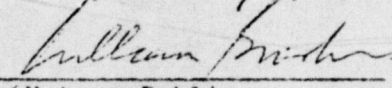
3. I state that Aeromexico never contemplated that a price for services under the contract could be set by a stranger. Aeromexico officials did not consider that the signing of this agreement was an abdication of their responsibility to allocate Aeromexico's funds as they determined to be in the the best interests of the company.

4. For the reasons set forth above and in the accompanying Reply Memorandum, I respectfully request that the Court grant Aeromexico's Motion to Stay the Arbitration pending the determination of Aeromexico's action for declaratory judgment.

  
\_\_\_\_\_  
CONSTANTINO TREJO

Sworn to before me this

18<sup>th</sup> day of July, 1974.

  
\_\_\_\_\_  
Notary Public

WILLIAM E. EGAN  
NOTARY PUBLIC, State of New York  
No. 31-5464175 New York County  
Term Expires March 30, 1976



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
AERONAVES DE MEXICO, S.A., :

Plaintiff, :

74 CIV. 2691

-against- :

NOTICE OF MOTION  
TO DISMISS COMPLAINT

TRIANGLE AVIATION SERVICES, INC., :

(CLB)

Defendant. :  
-----x

PLEASE TAKE NOTICE that, on the summons and complaint herein, defendant will move this Court in Room 619, United States Courthouse, Foley Square, New York, New York, on the 30th day of July, 1974 at 9:30 a.m., or as soon thereafter as counsel may be heard, for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the said complaint, on the ground that the complaint fails to state a claim upon which relief can be granted, and directing that defendant have judgment dismissing the action, together with its costs.

Dated: New York, New York  
July 19, 1974

MILLER AND SEEGER

By: Seymour W. Miller  
Seymour W. Miller

Attorneys for Defendant  
660 Madison Avenue  
New York, N.Y. 10021  
(212) PL 2-0350

TO: Skadden, Arps, Slate, Meagher & Flom  
Attorneys for Plaintiff  
919 Third Avenue  
New York, N.Y. 10022

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

AERONAVES DE MEXICO, S.A.,

Plaintiff,

-against-

TRIANGLE AVIATION SERVICES, INC.,

Defendant.

-----X

74 Civ. 2691-CLB

MEMORANDUM DECISION

Brieant, J.

Plaintiff, Aeronaves de Mexico, S.A., ("Aeronaves"), has moved to stay arbitration pending the determination of this action for a declaratory judgment that the matters in controversy are not within the scope of its agreement to arbitrate. Defendant Triangle Aviation Services, Inc. ("Triangle"), opposes, and has moved for an order pursuant to Rule 12(b)(6), F.R.Civ.P., dismissing the complaint for failure to state a claim.

On November 16, 1973, Triangle and Aeronaves entered into a written agreement (the "Agreement") under which, for a period certain, Triangle was to provide ground services in New York at John F. Kennedy International Airport ("JFK") for Aeronaves' aircraft. In Article VII of the Agreement, the parties agreed



that "[a]ny and all controversies in connection with and/or arising out of this Agreement or the breach thereof shall be exclusively settled by arbitration...."

The Agreement provided that Aeronaves would submit to Triangle "the flight patterns and operational characteristics" of its flight schedule. [Agreement, ¶¶2-3 and 2-4] At that time, Aeronaves' fleet of aircraft at Kennedy Airport included DC 8/50 and DC 8/63 series aircraft. Charges for services were predicated upon varying manpower and equipment requirements for servicing the particular models. The Agreement further provided [¶3-3], that if the volume of flights, aircraft types, arrival/departure times, or cargo load factors changed, Triangle would determine what, if any, additional manpower and equipment would be required and "an increase in the charges will be negotiated to the satisfaction of both parties."

Some time prior to May 2, 1974, Aeronaves notified Triangle that it intended to operate DC-10 aircraft to and from JFK, and requested that Triangle quote charges. Triangle submitted a price quotation on May 2, 1974. This quotation was rejected by Aeronaves, and thereafter, no agreement was reached

with respect to increased charges as a result of Aeronaves' shift to DC-10 aircraft. Aeronaves hired others to service these flights.

On June 5, 1974, Aeronaves was served with a demand for arbitration. Triangle is seeking an award from the arbitrator holding that (Exhibit F, Affidavit of Mr. Constantino Trejo, sworn to June 20, 1974):

1. The Agreement binds the parties until December 31, 1975, regardless of the aircraft type which Aeronaves elects to use.

2. All changes in price authorized by the contract, if not agreed to, must be arbitrated in accordance with the terms thereof, inclusive of price changes occasioned by changes in aircraft types.

3. Triangle's price quotations for the servicing of Aeronaves' DC-10 flights are fair and justified.

4. Triangle is entitled to recover all damages suffered by Aeronaves' breach of the Agreement, including lost fees, costs and disbursements, administrative fees, and legal fees, together with interest.

On June 24, 1974, Aeronaves commenced this action.

Plaintiff's motion for a stay invokes the equity powers of the Court rather than a specific remedy under the Federal Arbitration



Act. In determining whether an issue is arbitrable, the "court's function ... is limited to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract [to arbitrate]." Hamilton Life Insurance Company of New York v. Republic National Life Insurance Company, 408 F.2d 606, 609 (2d Cir. 1969). The instant Agreement contemplated the possibility of a change in aircraft types and provided for the negotiation of new charges. Its arbitration clause, previously quoted, is about as broad in scope as our language permits.

Aeronaves contends that the issues in controversy are beyond the scope of the arbitration clause. The case of Necchi S.p.A. v. Necchi Sewing Machine Sales Corp., 348 F.2d 693 (2d Cir. 1965), cert. denied, 383 U.S. 909 (1966), holds that the failure to negotiate an extension of an exclusive dealership agreement did not create an arbitrable issue, since an arbitrator could not be expected to write a renewal contract for the parties. The Agreement in this case does not call for such an undertaking by the arbitrator. In American Home Assurance Company v. American Fidelity and Casualty Company,

356 F.2d 690 (2d Cir. 1966), an arbitrable issue was found where the addendum to a reinsurance contract reduced the rate of premium and an accompanying letter provided that in the event that the final loss ratio during the stated years exceeded 65% of the gross premium "there shall be an adequate amendment of the premium ... on a basis to be mutually arranged." Id. at 691.

What is at issue here is the renegotiation of a price for future services upon the happening of a commercial contingency previously contemplated. In American Home Assurance, supra, the Court recognized that (p.393 of 356 F.2d),

"[i]t is precisely such questions in specialized commercial dealings of this sort that are especially adapted to resolution by commercial men as arbitrators. Having chosen in advance such a tribunal, appellant may not enlist the aid of the courts to delay or defeat its proper functioning."

Although paragraph 3-3 of the Agreement does not indicate specifically the procedure to be followed if an increase in charges cannot be negotiated to the satisfaction of both parties, I find such failure to agree would give rise to an arbitrable controversy under the instant arbitration clause. At least, the arbitrators could so conclude.



When the contract was made, it was also within the contemplation of the parties that a controversy might arise concerning increased charges due to changes in flight schedules or load factors on DC-8 aircraft, matters similarly covered by paragraph 3-3, and under the peculiar commercial situation in which the parties found themselves, entirely susceptible to resolution by arbitration. There appears to be no basis for a different conclusion as to a controversy over fees and charges emerging from a change in aircraft type.

"In deciding the question of arbitrability, the federal policy [is] to construe liberally arbitration clauses, to find that they cover disputes reasonably contemplated by this language, and to resolve doubts in favor of arbitration...." Coenen v. R.W. Pressprich & Co., 453 F.2d 1209, 1212, (2d Cir.), cert. denied, 406 U.S. 949 (1972).

Here, arbitration was a reasonable means for the parties to use to fix the charges or fees upon failure to agree. Without such provision, where, as here, the change in aircraft type was foreseeable, and the reasonable charges to be made in the event of such change could not be set in advance, the parties without arbitration would have no more than nudum pactum, or an agreement to agree. We will not infer that either party had

any such intent, that is, to grant to the other unilateral power to abrogate or terminate this contract for a fixed term simply by refusing or failing to agree. Rather, using language apt for a perceived need, they granted the arbitrator power sufficiently broad to fix such prices. ,

Since I find that the instant controversy was encompassed by the parties' broad agreement to arbitrate, the remaining issues involve the construction and interpretation of the Agreement. Although the interpretation of the Agreement may raise issues of law, such issues may properly be entrusted to the arbitrator for decision. Prima Paint Corp. v. Flood & Conklin Manufacturing Co., 388 U.S. 395 (1967); Robert Lawrence Company v. Devonshire Fabrics, Inc., 271 F.2d 402 (2d Cir. 1959), cert. dismissed, 364 U.S. 801 (1960).

Assuming, without deciding, that the Agreement is not considered a "maritime transaction or contract ... involving commerce" and therefore not governed by federal law, this Court sitting with diversity jurisdiction would be directed to a similar result under New York law. "A broad arbitration clause should be given the full effect of its wording in order to



implement the intention of the parties." Weinrott v. Carp, 32 N.Y.2d 190, 199, 344 N.Y.S.2d 848, 856 (1973). "Once it be ascertained that the parties broadly agreed to arbitrate a dispute 'arising out of or in connection with' the agreement, it is for the arbitrators to decide what the agreement means and to enforce it according to the rules of law which they deem appropriate in the circumstances." Matter of Exercycle Corp., 9 N.Y.2d 329, 334, 214 N.Y.S.2d 353, 355 (1961); Weinrott v. Carp, 32 N.Y.2d 190, 195-96, 344 N.Y.S.2d 848, 853 (1973).

Where the issues in an action for a declaratory judgment parallel and duplicate the issues appropriately before the arbitrators, the Court may dismiss the action or deny all relief, or declare and enforce defendant's rights to arbitrate. Necchi S.p.A. v. Necchi Sewing Maching Sales Corp., supra, at p.696. An order compelling arbitration under §4 of the Federal Arbitration Act is appropriate here.

Plaintiff's motion for a stay of arbitration is denied. Defendant's motion is granted to the extent of directing entry of a final judgment which will declare the right of the defendant to compel and direct arbitration of the entire controversy, and deny

any relief to plaintiff. Nothing herein contained shall be deemed to adjudicate any aspect of the merits of the underlying controversy. The arbitrators shall enjoy the same plenary jurisdiction to decide all of the issues of fact and law, including the interpretation of the contract, which has been entrusted to them by the arbitration clause previously quoted, to settle "[a]ny and all controversies arising out of this Agreement or the breach thereof...." See Robert Lawrence Co., supra, p.412.

The proceedings before the arbitrators are stayed pending expiration of the time within which an appeal may be taken, and if taken, pending the decision thereon. No bond is necessary.

Settle a final judgment on five (5) days notice.

Dated: New York, New York  
September 16, 1974

CHARLES L. BRIEANT, JR.

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CHARLES L. BRIEANT, JR.  
U. S. D. J.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



AERONAVES DE MEXICO, S.A.,

Plaintiff,

-against-

TRIANGLE AVIATION SERVICES, INC.,

Defendant.

FINAL  
JUDGMENT

74 Civ. 2691 (C.L.B.)

WICKOFFILM  
SEP 30 1974

Plaintiff Aeronaves de Mexico, S.A. ("Aeromexico"),  
having filed a Summons and Complaint in this Court against  
defendant, Triangle Aviation Services, Inc. ("Triangle"),  
requesting judgment, *as herein set forth; and*  
~~among other things, (1) that no~~  
~~contract exists between Aeromexico and Triangle with reference~~  
~~to the provision of ground services for Aeromexico's DC-10-30~~  
~~aircraft; (2) that Aeromexico is not obligated to deal with~~  
~~Triangle with reference to servicing its DC-10-30 aircraft;~~  
~~(3) that no arbitrable issue exists under the Contract; and~~  
~~(4) enjoining Triangle from arbitrating matters relating to~~  
~~the charge for servicing DC-10 aircraft, and plaintiff~~  
Aeromexico having moved to stay arbitration pending the  
determination of said suit, and defendant Triangle having  
moved to dismiss the complaint for failure to state a claim  
and the said motions having come on to be heard before the  
Court, and the Court having filed its memorandum decision  
on September 16, 1974; it is

ORDERED, ADJUDGED AND DECREED as follows:

1. The motion of defendant Triangle to dismiss the Complaint pursuant to Rule 12(b)(6), Fed. R. Civ. P., for failure to state a claim is hereby granted *except to the extent that the Court has undertaken to preserve the rights of the parties in this judgment*

2. The motion of plaintiff Aeromexico to stay the arbitration is hereby denied;

3. Defendant Triangle and plaintiff Aeromexico are hereby directed to proceed to arbitration pursuant to Section 4 of the Federal Arbitration Act, 9 U.S.C. §4; *AAA Index No 1310-CLH*

4. The proceedings before the arbitrators are hereby *stayed* pending expiration of the time within which an appeal may be taken, and if such appeal is taken, *said* proceedings before the arbitrators are hereby stayed pending the decision thereon, no bond being necessary; and

*CLB/JSW*

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that nothing contained in the memorandum decision of the Court and in the judgment shall be deemed to adjudicate any aspect of the merits of the underlying controversy and the arbitrators shall enjoy plenary jurisdiction to decide all issues of fact and law including the interpretation of the contract.

Dated: New York, New York  
September 27<sup>th</sup>, 1974

*Charles L. Bryant Jr*  
U.S.D.J. *2111*

JUDGMENT ENTERED: - 9-30-74

*Raymond Z. Burghart*  
CLERK



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Miller & Leger

